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FEDERAL COMMUNICATIONS COMMISSION

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*Commissioner Ness sworn in on June 3, 1994.
**Commissioner Chong sworn in on June 6, 1994.

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Federal Communications Commission Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

CS Docket No. 94-99

In the Matter of

Amendment of Section 76.51
of the Rules to include
Sanger, California in the
Fresno-Visalia-Hanford-Clovis, California
Television Market

NOTICE OF PROPOSED RULE MAKING

Adopted: September 2, 1994; Released: September 19, 1994

Comment Date: November 10, 1994
Reply Comment Date: November 25, 1994

By the Chief, Cable Services Bureau:

1. Before the Commission is a petition for rule making filed by Sanger Telecasters, Inc., licensee of television station KMSG-TV, Channel 59, Sanger, California, affiliate of the Telemundo Spanish Network, to amend Section 76.51 of the Commission's Rules, 47 C.F.R. §76.51, to add the community of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.[1]

BACKGROUND

2. Section 76.51 of the Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators.[2] Some of the markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.[3] Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.[4]

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."[5]

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992,[6] which amended Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. §614, requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.[7]

THE PETITION

5. According to the petitioner, Sanger is located between Fresno (the dominant community in the market) and Visalia; is some 12 miles from Fresno and only a few miles northeast of a line between the center of Fresno and the center of Visalia. Sanger is approximately 28 miles from Visalia, 27 miles from Hanford and 12 miles from Clovis. KMSG-TV attaches maps of its city grade, Grade A and Grade B contours and of the Grade B signal coverage contours of the other stations in the market. These show that its Sanger is located inside the Fresno-Visalia-Hanford-Clovis Arbitron Area of Dominant influence ("ADI") and is within the Grade A contours of all 7 commercial television stations licensed to the designated communities in the Fresno-Visalia-Hanford-Clovis market. KMSG-TV provides city grade coverage to both Fresno and Clovis and Grade B coverage to both Visalia and Hanford.

6. Although KMSG-TV is entitled to carriage on area cable systems by virtue of its inclusion in the Fresno-Visalia (Hanford) ADI,[8] because Sanger is not a designated community in the Section 76.51 market listings, KMSG-TV is considered a "distant signal" for purposes of compulsory copyright license liability if carried on certain cable sys-

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[1] *See Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n.150 (1993).

[2] *See* 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f).

[3] *See CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974).

[4] *See Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

[5] *See, e.g., TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), *citing Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). *See, also, Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

[6] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[7] The Commission has delegated authority to the staff to act on petitions for rule making seeking market redesignation and has stated that it expects "that requests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals." *See Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd at 2977-78, n.50 (1993).

[8] *See* Section 76.56(b) of the Commission's Rules.

tems in the ADI.[9] Petitioner states that the expanded television market designation is necessary for station KMSG-TV to be carried on certain cable systems in the market as a "local" signal (i.e. without the cable systems thereby incurring significant copyright royalty fees for carriage of the station).[10]

DISCUSSION

7. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Fresno, Visalia, Hanford, Clovis, and Sanger do compete throughout most of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, the petitioners' proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Sanger to the Fresno-Visalia-Hanford-Clovis, California television market.

ADMINISTRATIVE MATTERS

Ex Parte Rules -- Non-Restricted Proceeding

8. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

9. Pursuant to applicable procedures set forth in §§1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **November 10, 1994**, and reply comments on or before **November 25, 1994**. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

10. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601 (3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Additional Information

11. This action is taken by the Chief, Cable Television Bureau pursuant to authority delegated by Section 0.321 of the Commission's rules. For additional information on this proceeding, contact William H. Johnson (202) 416-0856.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Acting Chief, Cable Services Bureau

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[9] Under Section 76.55(c)(2) of the Rules, a local commercial television station otherwise entitled to mandatory carriage need not be carried on market-area cable systems if the station is considered a "distant signal" under the copyright compulsory license (17 U.S.C. §111) and the station does not agree to indemnify the cable operator for the increased copyright liability. *See Report and Order* in MM Docket 92-259, *supra*, at 2973-74.

[10] Stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market. The absence of Sanger as a designated community in this market list may result in KMSG-TV's classification as a "distant signal" for market-area cable systems more than 35 miles from Sanger. By amending Section 76.51 of the Rules to include the community of Sanger in the market as proposed, market-area cable systems will presumably be able to carry its signal on an equal basis with other stations in the market without incurring distant signal liability. *See also Cable Compulsory License;Major Television Market List*, Copyright Office, Library of Congress, 59 Fed. Reg. 41512 (August 12, 1994)(Indicating that Copyright Office would generally accept FCC changes in market designations for purposes of administering the cable television compulsory copyright licensing provisions of Section 111 of the Copyright Act.)

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

VIA USA, LTD — File Nos.I-T-C-93-031
TELEGROUP, INC. — I-T-C-93-050

Applications for Authority Under Section 214 of the Communications Act of 1934, as amended, to operate as International Resale Carriers

DISCOUNT CALL INTERNATIONAL CO. — File No.I-T-C-93-054

Application for Authority Under Section 214 of the Communications Act, as amended

ORDER

Adopted: September 2, 1994; Released: September 12, 1994

Comment Date: October 14, 1994
Reply Comment Date: November 14, 1994

By the Commission:

1. On May 11, 1994, the Commission granted the above-referenced Section 214 applications of VIA USA, Ltd., Telegroup, Inc., and Discount Call International Co. to resell international switched services of other carriers using a "call-back" configuration.[1] This service allows a customer in a foreign country to use foreign facilities to dial a telephone number in the United States and receive dial tone at a switch at the reseller's U.S. location, which the customer can then use to place a call via an outbound switched service of a U.S. carrier. The calls originating at U.S. locations are billed at U.S.-tariffed rates.

2. AT&T petitioned to deny these applications alleging that this service constitutes an unreasonable practice under Section 201 of the Communications Act ("the Act") and may constitute wire fraud. We denied AT&T's petition.[2] On June 10, 1994, AT&T filed a petition for reconsideration asking us to find that uncompleted call signalling is an unreasonable practice under Section 201(b) of the Act, is contrary to the public interest standard of Section 214 of the Act, violates Section 202(a) of the Act, and violates the federal wire fraud statute, 18 U.S.C. § 1343.[3]

3. We received comments in support of AT&T's petition from MCI Telecommunications Corporation (MCI), Sprint Communications Company L.P. (Sprint), and The Regional Technical Commission on Telecommunications of Central America (COMTELCA) and the National Telecommunications Institute of Panama (INTEL) (collectively referred to as COMTELCA/INTEL). Oppositions to AT&T's petition were filed by VIA USA, Ltd. (VIA USA), Telegroup, Inc. (Telegroup) and the Telecommunication Resellers Association (TRA).

4. Both VIA USA and Telegroup filed motions to strike the comments filed by MCI, Sprint and COMTELCA/INTEL. AT&T, MCI, Sprint and COMTELCA/INTEL opposed the motions to strike the supporting comments. VIA USA and Telegroup argue in their motions that the comments supporting AT&T's petition are untimely, procedurally defective requests for the Commission to reconsider its initial grant of Section 214 authority to the above-captioned applicants. In particular, VIA USA and Telegroup state that Section 1.106(g) of the Commission's Rules only contemplates the filing of "oppositions" to petitions for reconsideration, not comments in support of such petitions. Further, they state that, in addition to repeating and expounding upon AT&T's arguments in its petition, the COMTELCA/INTEL comments raise new issues relating to the legality of call-back services under international law and the law of foreign countries. Alternatively, VIA USA and Telegroup contend that, if we do not grant their motions to strike, we should extend the reply period several months because COMTELCA/INTEL have raised new arguments not previously raised by any party, which significantly expand the scope of the proceeding.

5. The comments supporting AT&T's petition raise issues involving complex questions of international law, international comity and the law of foreign countries. In particular, COMTELCA/INTEL raise the argument that call-back services employing an uncompleted call signaling configuration violate international law, *i.e.* Article 1.5 and 3.3 of the International Telecommunications Union (ITU) Regulations.[4] In addition, COMTELCA/INTEL's comments also claim that the applicants may not offer uncompleted call signalling services except pursuant to appropriate operating agreements with foreign telecommunications administrations. Moreover, COMTELCA/INTEL have submitted evidence as to the effect that our authorization of this service may have on international comity.[5]

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[1] *VIA USA, Ltd et al.*, 9 FCC Rcd 2288 (1994).
[2] *See id.*
[3] In order to develop a complete record on the issues raised by AT&T's petition, we extended on our own motion for 30 days the time for the filing of comments. "Pleading Cycle Extended for Comments on AT&T's Petition for Reconsideration of Commission Order Authorizing Three International Resale Carriers Proposing to Provide Call-Back' Services," FCC Report No. I-6991 (released June 22, 1994)(hereinafter referred to as "June 22 Public Notice").
[4] In the initial proceeding, the record did not address the argument that the proposed call-back services violated international law. *See VIA USA, Ltd. et al.*, 9 FCC Rcd at 2292, n. 37.
[5] COMTELCA/INTEL further contend that there are other forms of call-back services that raise similar issues under international law and the law of foreign countries which the Commission did not address in its initial decision. For instance, COMTELCA/INTEL reference the "hot line" method whereby a U.S. reseller continuously places calls to the telephone of a subscriber located outside the United States. The called party's telephone has a disconnected ringer. When the called party wants to access a U.S. dial tone to place an international call to

6. We conclude that the issues raised in the comments supporting AT&T's petition merit examination. Therefore, we will, on our own motion, seek additional comment from the parties and members of the public on all of the issues raised in the comments supporting AT&T's petition.

7. Because we have decided on our own motion to expand the scope of this reconsideration proceeding, we find that the motions to strike the supporting comments of MCI, Sprint and COMTELCA/INTEL are moot. These supporting comments address the issues which we will be examining, and therefore will be made part of the record. We will, however, grant VIA USA's and Telegroup's alternative request that we further extend the period for filing comments. In addition, we will seek the advice of the Department of State regarding the issues of international law, international comity, and the laws of foreign countries. Further, in order to augment the record with respect to AT&T's assertion that uncompleted call signalling violates the federal wire fraud statute, we also will seek the advice of the Department of Justice on this issue. Finally, as noted above, because of the general importance of the issues in this case, we will entertain additional comments from all interested members of the public as well as from the parties to this proceeding.

8. This Section 214 proceeding will continue to be conducted as a non-restricted proceeding in which written and oral *ex parte* contacts are permitted, but subject to disclosure. *See* 47 C.F.R. § 1206.

9. Accordingly, IT IS ORDERED that the comments of MCI, Sprint and COMTELCA/INTEL are accepted into the record of this proceeding, and Telegroup's and VIA USA's motions to strike the comments ARE DISMISSED as moot.

10. IT IS FURTHER ORDERED that this proceeding is opened to the general public and interested persons are invited to file comments on any of the issues raised in AT&T's petition or the supporting comments by **October 14, 1994**, and reply comments by **November 14, 1994.**

11. IT IS FURTHER ORDERED that the Secretary shall serve a copy of this Order on each party to this proceeding by certified mail.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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a U.S. location or elsewhere, he or she simply picks up the receiver and "answers" one of several thousand continuous calls made to that particular phone during the day and receives a dial tone at the reseller's U.S. location. COMTELCA/INTEL assert that the international law and public interest issues raised by this practice should be addressed in this proceeding, or, alternatively, should be addressed in a rulemaking proceeding that covers the full range of issues raised by the proliferation of call-back methods used to provide U.S. dial tone to foreign parties.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Southwestern Bell Telephone Company

Petition for Waiver of Requirements
Governing Alternate Technologies
for Equal Access

ORDER

Adopted: September 6, 1994; Released: September 7, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On April 12, 1994, Southwestern Bell Telephone Company (Southwestern Bell) requested waiver of the *Alternate Technologies Order*. That Order requires that after December 31, 1992, Southwestern Bell charge less than premium rates for access provided through alternate equal access technology, described in more detail below.[1] For reasons discussed below, we grant Southwestern Bell's request for waiver.

2. Under the *Modification of Final Judgment*, local exchange carriers (LECs) are required to provide to all interexchange carriers (IXCs) exchange access that is equal in type and quality to that provided to American Telephone and Telegraph Company (AT&T), upon bona fide request.[2] Most LECs comply with this requirement by replacing step-by-step or electromechanical switches, which cannot provide equal access, with electronic switches. Some LECs, however, sought to implement equal access in certain end offices by using "adjunct" or "alternate" technologies instead of electronic switches.[3] "Alternate technologies" are used in step-by-step or electromechanical end offices, or access tandems, to achieve equal access.[4]

3. The Commission has found in the past that the use of alternate technology to provide equal access was not unreasonable in light of the Court's requirement to provide equal access by March 1, 1988.[5] However, the Commission also determined that alternate technologies produce more post-dial delay than electronic switches do,[6] and that some basic and enhanced services, such as those conditioned upon open network architecture (ONA), and signalling system 7 (SS7), would not be available at an electromechanical switch using alternate technology.[7] Therefore, the Commission found that alternate technology would not be an adequate permanent solution for providing equal access. As a result, it established a transition period of approximately 18 months, ending on December 31, 1992, during which LECs were to replace alternate technologies with electronic switches.[8] In the alternative, LECs could continue to use alternative technologies after December 31, 1992, so long as they charged something less than premium rates for access provided through the use of alternate technologies.[9]

4. Southwestern Bell now seeks waiver of the *Alternate Technologies Order* to allow it to provide, until December 31, 1997, equal access through alternate technologies at certain end offices but at premium access rates where there is currently no equal access capability. Southwestern Bell states there are 83 end offices in Oklahoma which have not yet been converted to equal access. These end offices serve 102,194 access lines, or about 7 percent of the total number of access lines in the state.[10] Southwestern Bell further states that it will convert ten of those offices to equal access provided by electronic switches by the end of 1994. It thus seeks waiver only for the remaining 73 central offices. These remaining offices serve 94,072 access lines, which is an average of less than 1300 access lines per end office.[11] Southwestern Bell states that it has not received a bona fide request for equal access at these central offices, but claims that one of its major access customers has indicated a significant interest in equal access capability as soon as possible.[12]

5. Southwestern Bell asserts that post-dial delay associated with alternative technologies is only two to three seconds longer than post-dial delay associated with the electromechanical switches it now has in place in Oklahoma.[13] Southwestern Bell claims that a full switch conversion at these central offices would cost about $51 million, while alternative technology conversions would cost about $2 million.[14] Southwestern Bell maintains that AT&T is currently charged premium access rates at these central offices, and argues that other interexchange carriers (IXCs) should not pay less than premium rates after equal access

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[1] Southwestern Bell Telephone Company, *et al.* MM (*sic*) Docket No. 88-287, 6 FCC Rcd 3760, 3761 (1991) (*Alternate Technologies Order*).

[2] United States v. American Telephone and Telegraph Co., 552 F. Supp. 131, 232-33 (D.D.C. 1982) (*Modification of Final Judgment* or *MFJ*).

[3] For example, in 1987, US West introduced the LATA Equal Access System (LEAS) and System Central Office Network Access (System CONTAC), which are software and hardware modifications, respectively, to electromechanical switches. *See* Alternative Equal Access Arrangements, 3 FCC Rcd 5085 (Com. Car. Bur. 1987).

[4] *Alternate Technologies Order*, 6 FCC Rcd at 3760 n.1.

[5] *Alternate Technologies Order*, 6 FCC Rcd at 3770 (para. 89).

[6] *Id.* at 3770 (paras. 90-91).

[7] *Id.* at 3772 (para. 108).

[8] *Id.* at 3780 (paras. 198-199).

[9] *Id.* at 3780 (para. 201).

[10] Southwestern Bell Petition at 5.

[11] *Id.* at 5-7.

[12] *Id.* at 6. Southwestern Bell does not state specifically when it intends to replace its electromechanical switches. However, in February 1994, the Oklahoma Corporation Commission adopted rules requiring LECs in Oklahoma to meet certain minimum service standards within two years, including custom local area signaling services (CLASS). *See* In the Matter of a General Order of the Oklahoma Corporation Commission Amending and Establishing Certain Rules Governing Telephone Service, Cause No. RM 930000090, adopted Feb. 8, 1994; Section 165:55 -13-13 of the Rules of the Oklahoma Corporation Commission. As mentioned above, CLASS services are not available with electromechanical switches. *See Alternative Technologies Order*, 6 FCC Rcd at 3772 (para. 108). Thus, to comply with the Oklahoma Corporation Commission's minimum service standards, it appears necessary for Southwestern Bell to finish replacing its electromechanical switches by early 1996.

[13] Southwestern Bell Petition at 6.

[14] *Id.* at 7.

conversion.[15] Southwestern Bell asserts that equal access through alternate technology is preferable to no equal access at all.[16] Finally, Southwestern Bell maintains that the Commission has ruled favorably on similar waiver petitions filed by US West and GTE.[17]

6. By public notice, the Common Carrier Bureau established a pleading cycle for comment on Southwestern Bell's waiver request.[18] None were received.

7. Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3, provides that waiver petitions may be granted if "good cause therefor is shown." Upon review of Southwestern Bell's petition, we conclude below that it has shown good cause for a limited waiver of the Commission's requirement that after December 31, 1992, "something less than premium rates" be charged for access to end offices that continue to utilize alternate technologies to provide equal access. As the courts have noted, general rules can be waived where particular facts would make strict compliance inconsistent with the public interest.[19] Thus, the Commission in the *Alternate Technologies Order* stated that carriers could obtain a waiver of the requirements of that Order.[20]

8. The waiver sought is limited in scope and would avoid considerable costs. Southwestern Bell states that it has converted to equal access all the end offices in all the states in its region except for Oklahoma. In that state, it has converted over 90 percent of its end offices. Southwestern Bell further states that a full switch conversion at these central offices would cost about $51 million, while conversions using alternate technology would cost only about $2 million.[21] Finally, Southwestern Bell seeks waiver to charge premium access rates at its alternate technology end offices in Oklahoma only until December 31, 1997.[22]

9. In the *US West Order*, the Common Carrier Bureau granted the carrier a waiver to provide equal access at 18 small end offices until the end of 1995. That Order noted that an inordinate amount of time would be consumed in determining a "less-than-premium" rate which would be in effect only temporarily.[23] This consideration also weighs in favor of Southwestern Bell's petition. The other factors favoring grant of the petition are the magnitude of the costs required to make full switch conversions at the remaining non-equal access offices in Oklahoma, and the progress Southwestern Bell has made in converting its end offices to equal access outside its territory. Finally, no parties opposed Southwestern Bell's waiver request. Based upon these considerations, we therefore conclude that Southwestern Bell has shown good cause for the waiver it seeks.

10. Accordingly, IT IS ORDERED that the petition for waiver filed by Southwestern Bell Telephone Company IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

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[15] *Id.*
[16] *Id.*
[17] *Id.* at 2-5. *See* US West Communications Petition for Authority to Continue to Charge Premium Rates for Access Service After 1992, CC Docket No. 88-287, 8 FCC Rcd 190 (Com. Car. Bur. 1992) (*US West Order*); GTE Service Corporation Use of Alternate Technologies for Equal Access, CC Docket No. 88-287, 8 FCC Rcd 4438 (Com. Car. Bur. 1993) (*GTE Order*).
[18] Public Notice, Southwestern Bell Petitions for Waiver of the Requirement in the Alternate Technology Order, CC Docket No. 88-287, 9 FCC Rcd 2521 (May 24, 1994).
[19] WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).
[20] The *Alternate Technologies Order* stated that to obtain a waiver of the general rule set forth in that Order, a carrier must show that conversion to full equal access would "clearly be uneconomical." *Alternate Technologies Order*, 6 FCC Rcd at 3780 (para. 202). This standard, however, applies only to instances in which the carrier declines to convert to equal access altogether. It does not apply to this instance, in which the carrier commits to convert but merely proposes to delay conversion for a relatively short period of time. Thus, the general waiver standard set forth in *WAIT Radio v. FCC* best applies to Southwestern Bell's request. *See US West Order*, 8 FCC Rcd at 191 n.8; *GTE Order*, 8 FCC Rcd at 4439 n.9.
[21] Southwestern Bell Petition at 7.
[22] *Id.* at 6-7.
[23] *US West Order*, 8 FCC Rcd at 191 (para. 14).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US West Communications, Inc. — Transmittal No. 525

Revisions to Tariff
F.C.C. No. 5

ORDER

Adopted: September 1, 1994; Released: September 1, 1994

By the Chief, Common Carrier Bureau:

1. On August 12, 1994, US West Communications, Inc. (US West) filed Transmittal No. 525 to offer 500 Access Service. 500 access service would forward to the subscribing access service customer an end user-dialed 0+ or 1+ 500 NXX-XXXX call based on the NXX digits dialed.[1] The NXX digits would identify the subscribing access service customer as the carrier to which the call should be routed. This 500 access service is intended to enable callers to gain access to a variety of services, including personal communications services (PCS).

2. US West intends to establish three new non-recurring rate elements for its 500 access service: (1) a basic route pattern charge, applicable if the access customer intends to route its 500 access calls using the same signaling as that customer uses for its 1+ or 0+ traffic; (2) a special route pattern charge, applicable if the access customer intends to route 500 access calls using different signaling than that the access customer uses for its 1+ or 0+ traffic is routed; and (3) an activation charge.[2] In addition to its existing switched access charges, US West plans to impose a per call carrier identification charge to recover the costs of translating and routing 500 NXX calls.[3] On August 11, 1994, US West filed a petition for waiver of Part 69 of the Commission's Rules to establish these new rate elements for its 500 access service. Comments regarding this petition were filed on August 9, 1994, and replies to those comments are due September 9, 1994.

3. As US West admits, the rate elements it seeks to establish are inconsistent with the access charge rules set forth in Part 69 of the Commission's Rules.[4] Therefore, US West must secure a waiver of Part 69 in order to offer its 500 access service as it is presently structured. While US West has recently requested such a waiver, the Bureau has neither had an opportunity to develop a record on its request or review the request itself. Because US West has not yet obtained waiver of Part 69 of the rules, its tariff transmittal establishing 500 access service is in patent violation of a Commission rule. Therefore, we reject Transmittal No. 525 as unlawful.[5]

4. Accordingly, IT IS ORDERED that US West Communications, Inc. Tariff F.C.C. No. 5, Transmittal No. 525, IS REJECTED.

5. IT IS FURTHER ORDERED that US West Communications, Inc. SHALL FILE tariff revisions removing the unlawful portions of the tariff within five days of the release date of this Order. We hereby waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59 for this purpose. US West Communications, Inc. should cite the "DA" number of this Order as the authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M. H. Wallman
Chief, Common Carrier Bureau

[1] US West Communications, Inc., Description and Justification (D&J) at 1-1.
[2] D&J at 1-6 - 1-7; US West Transmittal No. 525, Section 6.7.1.U, First Revised Page 6-203.
[3] *Id.* at 1-6.
[4] D&J at 1-2.
[5] US West would be free to refile tariff revisions establishing the rate structure for 500 service in Transmittal 525 if its waiver petition is granted.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-81

In the Matter of

GTE Telephone Operating Companies — Transmittal No. 909

Revisions to Tariff F.C.C. No. 1

ORDER

Adopted: September 9, 1994; Released: September 9, 1994

By the Deputy Chief (Policy), Common Carrier Bureau:

1. On April 22, 1994, GTE Telephone Operating Companies (GTOC), on behalf of the General Telephone Company of California (GTECA), filed Transmittal No. 873 to establish video channel service for Apollo CableVision, Inc. (Apollo), a cable company providing cable service in Cerritos, California. On that same day, GTECA also filed Transmittal No. 874 to provide this same service to an affiliated company, GTE Service Corporation (Service Corp.). Prior to that time, GTECA had been providing video channel service to Service Corp. pursuant to a five year waiver of the cable-telephone cross-ownership ban[1] and Section 214 authorization granted in 1988.[2] GTE stated that it submitted Transmittal 874 to enable Service Corp. to continue providing cable service to Cerritos subscribers after the waiver and Section 214 authorization expired on July 17, 1994.[3]

2. On July 14, 1994, the Common Carrier Bureau (Bureau) suspended Transmittal 873, and initiated an investigation into various issues raised by this tariff filing. In the same Order, we found that Transmittal 874 violates the Communications Act and the Commission's rules, and accordingly, we rejected Transmittal 874.[4] We ordered GTE to comply with the telephone-cable cross-ownership restriction within 60 days, so as to avoid any abrupt termination of cable programming service provided by GTE to subscribers in Cerritos.[5] On September 7, 1994, the United States Court of Appeals for the Ninth Circuit stayed the *Cerritos Tariff Order* "insofar as it rejects Transmittal 874." On September 9, 1994, GTOC filed Transmittal No. 909 to add to its tariff the material it removed in response to the rejection of Transmittal 874.

3. This transmittal is scheduled to take effect on September 12, 1994. Because we rejected Transmittal 874 as patently unlawful in the *Cerritos Tariff Order*, we did not reach several issues raised by the parties filing petitions to reject or suspend and investigate that filing. Specifically, we did not reach the issue of whether GTECA has adequately shown that Transmittal 874 would not result in unreasonably low anticompetitive prices for video programming services. We also did not decide whether the monthly charges to Service Corp. under Transmittal 874 would be unequal to Apollo's lump-sum payment for service under Transmittal 873, and thus unreasonably discriminatory.[6] Because Transmittal 909 is substantially similar to Transmittal 874, these issues are also raised by Transmittal 909. Thus, we conclude that Transmittal 909 raises substantial questions of lawfulness which warrant investigation. We will designate specific issues for investigation in a future Order, and include those issues in the pending investigation of Transmittal 873.

4. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the GTE Telephone Operating Companies, Transmittal No. 909, IS SUSPENDED for one day and an investigation of the referenced tariff transmittal, and any future tariff revisions modifying that transmittal, IS INSTITUTED.

5. IT IS FURTHER ORDERED that GTE Telephone Operating Companies SHALL FILE tariff revisions reflecting this suspension no later than three days from the release date of this order.

6. IT IS FURTHER ORDERED that pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. §204(a), GTE Telephone Operating Companies shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

7. For these purposes, GTE Telephone Operating Companies should cite Special Permission No. 94-1050 as the authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief (Policy)
Common Carrier Bureau

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[1] Section 613(b)(1) of the Cable Act of 1984, 47 U.S.C. §533(b)(1); Section 63.54 of the Commission's Rules, 47 C.F.R. §63.54.

[2] General Telephone Company of California, 4 FCC Rcd 5693, 5700-01 (paras. 50-61) (1989) (*Waiver Review Order*).

[3] Transmittal No. 874, Description and Justification (D&J) at 1.

[4] GTE Telephone Operating Companies, CC Docket No. 94-81, DA 94-784 (released July 14, 1994) (para. 16) (*Cerritos Tariff Order*).

[5] *Id.* at para. 18.

[6] *See Cerritos Tariff Order*, para. 20 n.38.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 94-67

In the Matter of

Ameritech Operating Companies Revisions to Tariff FCC No. 2	Transmittal No. 818
Bell Atlantic Telephone Companies Revisions to Tariff FCC No. 1	Transmittal No. 691
BellSouth Telecommunications, Inc. Revisions to Tariff FCC No. 1	Transmittal No. 222
Cincinnati Bell Telephone Company Revisions to Tariff FCC No. 35	Transmittal No. 661
GTE System Telephone Companies Revisions to Tariff FCC No. 1	Transmittal No. 106
GTE Telephone Operating Companies Revisions to Tariff FCC No. 1	Transmittal No. 904
Southwestern Bell Telephone Company Revisions to Tariff FCC No. 73	Transmittal No. 2382
United and Central Telephone Companies Revisions to Tariff FCC No. 1	Transmittal No. 15
U S West Communications, Inc. Revisions to Tariff FCC No. 5	Transmittal No. 530

ORDER

Adopted: September 2, 1994; Released: September 2, 1994

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On September 1, 1994, the above-captioned LECs filed interim tariffs offering expanded interconnection through virtual collocation for special access and switched transport services and, as described below, limiting the availability of their physical collocation offerings. These tariffs are scheduled to become effective September 3, 1994. By this Order, we are suspending the interim tariffs for one day, instituting an investigation, and imposing an accounting order.

II. BACKGROUND

2. On July 25, 1994, the Commission released its *Remand Order*[1] in response to the June 10, 1994 decision of the U.S. Court of Appeals for the District of Columbia Circuit in *Bell Atlantic v. FCC*.[2] In *Bell Atlantic v. FCC*, the Court stated that it would vacate in part the first two of the Commission's expanded interconnection orders[3] on the grounds that the Commission did not have authority under the Communications Act of 1934, as amended, to require local exchange carriers (LECs) to provide expanded interconnection through physical collocation. The Court also stated that it would remand the Commission's orders to permit the Commission to consider whether and to what extent to impose virtual collocation requirements in the absence of a physical collocation requirement.[4] In the *Remand Order*, the Commission adopted virtual collocation as the basic architecture for providing expanded interconnection and directed Tier 1 LECs (other than National Exchange Carrier Association pool members) to provide expanded interconnection for both interstate special access and switched transport through generally available virtual collocation services.[5]

3. The *Remand Order* required LECs to file tariffs offering virtual collocation on September 1, 1994, to be effective on December 15, 1994.[6] The Commission stated that December 15 was the earliest date by which the Commission could ensure that these tariffs would have undergone adequate review by the Commission's staff.[7] The Commission exempted LECs from the mandatory virtual collocation requirement in central offices at which they choose to provide physical collocation under tariff, subject to nonstreamlined regulation as a communications common carrier service.[8] To prevent any lapse in the effectiveness of its overall expanded interconnection policy, the Commission stated its intention to ask the D.C. Circuit to stay the issuance of its mandate until December 15, 1994, by which

[1] *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, FCC 94-190 (released July 25, 1994) (*Remand Order*).
[2] *Bell Atlantic Telephone Companies v. FCC*, No. 92-1619, 1994 WL 247134 (D.C. Cir., June 10, 1994) (*Bell Atlantic v. FCC*).
[3] *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992), *recon.*, 8 FCC Rcd 127 (1992), *vacated in part and remanded sub nom. Bell Atlantic v. FCC*, No. 92-1619 (D.C. Cir., June 10, 1994), *recon.*, 8 FCC Rcd 7341 (1993), Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7373 (1993), *pet. for review pending sub nom. Bell Atlantic v. FCC*, No. 93-1743 (D.C. Cir., filed Nov. 12, 1993).
[4] *Bell Atlantic v. FCC*, slip op. at 9-10.
[5] *Remand Order* at ¶ 3.
[6] *Id.* at ¶ 3, 36.
[7] *Id.*
[8] *Id.* at ¶ ¶ 3, 31-34.

time tariffs implementing the new virtual collocation rules could become effective.[9] The Commission stated that LECs must continue offering physical collocation until December 15, 1994, if the D.C. Circuit's mandate had not issued before that date.[10] On August 9, 1994, the Commission and the Tier 1 LECs entered into a letter agreement[11] that formed the basis for a joint motion for partial stay of the Court's mandate until December 15, 1994.[12] The D.C. Circuit granted the Joint Motion on August 24, 1994, stating that it would withhold issuance of the full mandate until December 15, 1994.[13]

4. The above-mentioned Letter Agreement sets forth procedures designed to facilitate an orderly implementation of the Commission's virtual collocation requirements, and to prevent undue disruptions to existing collocation customers. The Letter Agreement states that Tier 1 LECs not electing to satisfy their obligations under the *Remand Order* with a regulated physical collocation offering would file, on September 1, 1994, interim virtual collocation tariffs on short notice that are identical in substance to the permanent virtual collocation tariffs to be filed on that same date.[14] These interim tariffs would serve the public interest by, *inter alia*, permitting collocators to continue to receive, on an uninterrupted basis, tariffed expanded interconnection service during the period between the effectiveness of the interim tariffs and the date the permanent virtual collocation tariffs become effective.

5. In addition, the agreement states that upon the Court's grant of the Joint Motion, LECs may limit their offering of physical collocation until December 15, 1994, to interconnectors with operational physical collocation arrangements as of July 25, 1994, or "firm orders" (as described in the Letter Agreement) on June 10, 1994, if the interconnector elects to have the LEC complete the construction. After December 15, 1994, LECs electing to discontinue their physical collocation offerings will assure their expanded interconnection customers an orderly transition from physical to virtual collocation arrangements, or to any alternative forms of expanded interconnection that the Commission may approve.[15]

III. THE INTERIM TARIFFS

6. The above-captioned LECs[16] filed interim tariffs on September 1, 1994 offering expanded interconnection through virtual collocation for special access and switched transport services and limiting the availability of their physical collocation offerings as set forth in paragraph 5, *supra*. These tariffs are scheduled to become effective on September 3, 1994, and will remain in effect until at least December 15, 1994.[17] Based on our preliminary review, we find that the interim tariffs raise significant questions of lawfulness that warrant suspension for one day, investigation, and imposition of an accounting order. We will designate specific issues and establish a pleading cycle in a subsequent order.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the tariff revisions filed under the captioned transmittals ARE SUSPENDED for one day.

8. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 204(a), 205(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154 (i), 204(a), 205(a) and 403, an investigation IS INSTITUTED into the lawfulness of the tariff revisions filed under the captioned transmittals, as well as any future tariff revisions modifying those transmittals.

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i) and 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the local exchange carriers filing the captioned transmittals and any future tariff revisions modifying those transmittals SHALL KEEP ACCURATE ACCOUNT of all earnings, costs, and returns associated with the rates that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid.

10. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the local exchange carriers listed in the caption SHALL FILE tariff revisions reflecting this suspension no later than September 2, 1994. Special Permission No. 94-1012 is assigned for this purpose.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M. H. Wallman
Chief, Common Carrier Bureau

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[9] *Id.* at ¶ 3.
[10] *Id.* at ¶ 37.
[11] Letter from Mark L. Evans, Esq. on behalf of the Tier 1 LECs to William E. Kennard, Esq., General Counsel, FCC (August 9, 1994) (Letter Agreement).
[12] Joint Motion for Partial Stay of Mandate in *Bell Atlantic v. FCC* (filed Aug. 9, 1994) (Joint Motion).
[13] Order Granting Joint Motion, filed Aug. 24, 1994.
[14] Prior to filing their interim virtual collocation tariffs, the LECs filed on August 29, 1994, applications for special permission to file their interim tariffs on short notice. These applications were reviewed and granted by the Tariff Division, Common Carrier Bureau, on August 31, 1994.
[15] *See generally* Letter Agreement.
[16] The other Tier 1 LECs subject to expanded interconnection requirements have elected to provide physical collocation under tariff, subject to non-streamlined regulation as a communications common carrier service. These LECs, therefore, are exempt from the mandatory requirement for a general virtual collocation offering.
[17] Also on September 1, 1994, the above-captioned LECs filed permanent tariffs scheduled to become effective on December 15, 1994. These permanent tariffs are not subject to this order.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-101

In the Matter of

Amendment of Section 73.202(b), RM-8510
Table of Allotments,
FM Broadcast Stations.
(Kerman, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 1994; Released: September 20, 1994

Comment Date: November 14, 1994
Reply Comment Date: November 29, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Valley Center Broadcasting ("petitioner") requesting the allotment of Channel 252A to Kerman, California, as that community's second local FM service. Petitioner stated its intention to apply for Channel 252A if it is allotted to Kerman, as requested.[1]

Technical Statement

2. A staff review of the proposal reveals that Channel 252A can be allotted to Kerman, California, in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter site is located at least 0.7 kilometers (0.4 miles) south of the community at coordinates North Latitude 36-43-05 and West Longitude 120-03-55, to avoid short-spacing to the licensed site of Station KNAX(FM), Channel 250B, Fresno, California, at coordinates North Latitude 37-04-29 and West Longitude 119-25-52.

3. We believe the public interest would be served by proposing the allotment of Channel 252A to Kerman, California, since an interest has been expressed in providing a second local FM service to that community. Therefore, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Kerman, California, as follows:

	Channel No.	
City	Present	Proposed
Kerman, California	232A	232A, 252A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 14, 1994**, and reply comments on or before **November 29, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Valley Center Broadcasting
Attn: Joe S. Mauk
365 W. Menlo Avenue
Fresno, CA 93704

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who

[1] Although petitioner's request was signed, and its address provided, it failed to include an affidavit verifying that the statements contained in the petition are accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the commenting or petitioning party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1),303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-186

In the Matter of

Amendment of Section 73.202(b),	RM-8258
Table of Allotments,	RM-8333
FM Broadcast Stations.	RM-8343
(Diamond City, Arkansas, and Halfway, Humansville and Ozark, Missouri)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 12, 1994; Released: September 20, 1994

By the Chief, Policy and Rules Division:

1. In response to a request filed jointly by Ozark Mountain Broadcasting, Inc. ("OMB") and KYOO Broadcasting Company ("KBC"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4750 (1993). OMB proposes substitution of Channel 225C2 for Channel 225A at Ozark, Missouri, and modification of the construction permit for Station KZPF(FM) accordingly. KBC requests substitution of Channel 256A for Channel 226A at Half Way, Missouri, and modification of the construction permit for Station KYOO-FM to specify operation on Channel 256A. OMB and KBC filed joint comments restating their support for the proposed substitutions at Ozark and Half Way. Counterproposals were filed by Lake Broadcasting ("Lake") and Missouri Radio, Inc. ("MRI").[2] Reply comments were filed by OMB, KBC, MRI and Lake. On March 3, 1994, Lake Broadcasting and Missouri Radio, Inc. withdrew their respective counterproposals. No further consideration will be given to the allotment of an FM channel at Diamond City, Arkansas, or Humansville, Missouri.[3] Accordingly, comments filed in response to the counterproposals need not be considered.

2. After consideration of the information filed in this proceeding, we believe the public interest would be served by the substitution of Channel 225C2 for Channel 225A at Ozark, Missouri, and modification of the construction permit for Station KZPF(FM) accordingly. Channel 225C2 can be allotted to Ozark, Missouri, in compliance with the Commission's minimum distance separation requirements at the site specified by OMB.[4] The allotment at Ozark currently conflicts with the licensed site for Station KREB, Channel 225A, Huntsville, Arkansas, and the construction permit for Station KXBR, Channel 228A, Greenfield, Missouri. The authorization for each channel was modified in previous proceedings, and the substituted channels are fully spaced to OMB's proposal.[5] Therefore, grant of a license for Channel 225C2 at Ozark may be withheld until Station KREB, Huntsville, is licensed on Channel 258A and Station KXBR, Greenfield, is licensed on Channel 299A. We shall modify the construction permit for Station KZPF(FM), Ozark, Missouri to specify operation on Channel 225C2 in accordance with Section 1.420(g) of the Commission's Rules. Channel 256A can be allotted to Half Way, Missouri, in compliance with the Commission's spacing requirements at KBC's specified site.[6] We shall modify the construction permit for Station KYOO-FM at Half Way, Missouri, to specify operation on Channel 256A.[7]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 7, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Half Way, Missouri	256A
Ozark, Missouri	225C2

4. IT IS FURTHER ORDERED, That the Secretary of the Commission Shall Send by Certified Mail, Return Receipt Requested, a copy of this *Report and Order* to the following:

KXBR, Inc.
Station KXBR
19 East 200 South
Salt Lake City, Utah 84111

Vekony Communications, Inc.
Station KREB
280 N. College, #125
Fayetteville, Arkansas 72701

[1] The communities of Diamond City, Arkansas, and Humansville, Missouri, have been added to the caption.

[2] Public notice of the counterproposal filed by Missouri Radio, Inc. was given on September 16, 1993, Report No. 1965 (RM-8333). The counterproposal filed by Lake Broadcasting was put on public notice on September 23, 1993, Report No. 1970 (RM-8343). MRI requested the allotment of Channel 256A to Humansville, Missouri, as that community's first local service. Lake proposed the allotment of Channel 224A to Diamond City, Arkansas, as that community's first local service.

[3] Ozark Mountain Broadcasting, Inc. and KYOO Broadcasting Company filed comments in compliance with Section 1.420(j) of the Commission's Rules indicating no consideration will be paid to Lake Broadcasting (Diamond City) or Missouri Radio, Inc. (Humansville) in connection with the withdrawal of their counterproposals from this proceeding.

[4] The coordinates for Channel 225C2 at Ozark are 36-58-45 and 93-26-38.

[5] The *Report and Order* in MM Docket 92-49 modified the license for Station KREB, Huntsville, to specify operation on Channel 258A and modified the construction permit for Station KXBR, Greenfield, to specify operation on Channel 299A. *See* 8 FCC Rcd 734 (1993).

[6] The coordinates for Channel 256A at Half Way are 37-44-35 and 93-15-00.

[7] The construction permit for Station KYOO-FM expired on June 9, 1993, and was cancelled on March 3, 1994. However, on August 25, 1994, the construction permit was reinstated and an extension granted. The construction permit expires in February, 1995.

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station KZPF(FM), Ozark, Missouri, IS MODIFIED to specify operation on Channel 225C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the construction permit for Station KYOO-FM, Half Way, Missouri, IS MODIFIED, to specify operation on Channel 256A subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in permit BPH-900820MK except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BPH-900820MK, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Ozark Mountain Broadcasting, Inc., permittee of Station KZPF(FM) is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

8. IT IS FURTHER ORDERED, That the counterproposals filed by Missouri Radio, Inc. (RM-8333) and Lake Broadcasting (RM-8343) ARE DISMISSED.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Nevada Bell

and AAD 93-20

Oregon-Idaho Utilities, Inc.

Joint Petition for Waiver of
the Definition of "Study Area"
Contained in Part 36, Appendix-
Glossary, of the Commission's Rules

and

Oregon-Idaho Utilities, Inc.

Petition for Waiver of Section 61.41(c)
of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: September 13, 1994; Released: September 14, 1994

By the Deputy Chief (Policy), Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. On February 2, 1993, Nevada Bell and Oregon-Idaho Utilities, Inc. ("OIU") (collectively, "Petitioners") filed a joint petition seeking waiver of Part 36 of the Commission's rules in conjunction with the sale by Nevada Bell to OIU of six exchanges in Nevada and Oregon.[1] OIU also requests a waiver of the price cap rules contained in Section 61.41(c) of the Commission's rules, to allow the purchasing carrier to continue to be regulated on a cost basis rather than under price caps.[2] We placed this petition on public notice on March 10, 1993. We received comments from four parties and reply comments from three parties.[3] Bureau staff also requested and received additional information from the Petitioners regarding the proposed transaction.[4] On April 30, 1993, OIU submitted a copy of an Order from the Oregon Public Utility Commission ("OPUC") approving the transfer,[5] and on May 20, 1993, OIU submitted an Order from the Nevada Public Service Commission ("NPSC") approving the transfer.[6]

2. The six exchanges are located in Humboldt County, Nevada and in the southern portion of Malheur County, Oregon. These exchanges serve 578 residential and small business access lines: 563 lines in Nevada and 15 lines in Oregon. OIU currently serves approximately 550 lines: 500 in Malheur County, Oregon; and 50 in Owyhee County, Idaho. The exchanges being purchased adjoin OIU's present service territory in Oregon. OIU plans to replace most of the facilities in these exchanges, both to upgrade existing service and to provide service to persons presently unserved. OIU proposes to conduct its Nevada operations as a single separate operating division of the company under the name "Humboldt Telephone Company."[7]

II. STUDY AREA WAIVER

3. A study area is a geographical segment of a carrier's telephone operations. Generally, a study area represents a carrier's entire operation within a state. Thus, carriers that operate in more than one state typically have one study area for each state, and carriers that operate in a single state have a single study area. Carriers perform jurisdictional separations at the study area level. For jurisdictional separations purposes, the Commission froze study area boundaries effective November 15, 1984.[8] Carriers wishing to change their study area boundaries can request a waiver of the applicable rule.[9] The Commission has three primary concerns in considering study area boundary change petitions: first, that the change not affect adversely the Universal Service Fund ("USF") support program;[10] second, that the state commission(s) having regulatory authority have no objection to the change;[11] and finally, that the public interest strongly supports grant of the waiver.

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[1] Nevada Bell and Oregon-Idaho Utilities, Inc. Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary, of the Commission's Rules ("Joint Petition").

[2] Section 61.41(c) of the Commission's rules (the "all-or-nothing" rule), 47 C.F.R. § 61.41(c), provides that when a non-price cap company acquires a price cap company or any part thereof, the acquiring company shall become subject to price cap regulation.

[3] Comments were filed by the National Exchange Carrier Association, Inc. ("NECA"), the National Telephone Cooperative Association ("NTCA"), and the United States Telephone Association ("USTA"); an Opposition was filed by American Telephone and Telegraph ("AT&T"). NECA, NTCA, and the Petitioners filed reply comments.

[4] OIU submitted supplemental filings on May 20, 1993, July 9, 1993, October 29, 1993, May 18, 1994; and July 28, 1994. OIU also submitted an *Ex Parte* letter on August 18, 1994. Nevada Bell submitted a supplemental filing on April 25, 1994.

[5] Oregon Public Utility Commission Order, UM 539 UA 47, Order 93-384, entered Mar. 24, 1993 ("OPUC Order").

[6] Nevada Public Service Commission Order, Docket No. 92-12008, adopted May 17, 1993.

[7] OPUC Order at 2.

[8] *See* MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325 (Dec. 12, 1984) (*1984 Joint Board Recommended Decision*), adopted by the Commission, 50 Fed. Reg. 939 (Jan. 8, 1985) (*1985 Order Adopting Recommendation*).

[9] 47 C.F.R. Part 36, Appendix-Glossary.

[10] *See 1984 Joint Board Recommended Decision*, 49 Fed. Reg. at 48337, para. 65.

[11] *See generally* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990) ("*Study Area Notice*"). The Commission therein describes the factors that led to the present restriction on study area changes.

Petition

4. Six exchanges are being sold by Nevada Bell to OIU. The exchanges are in rural Nevada with the exception of a small portion of one exchange that extends into Oregon. Collectively, the exchanges serve a total of 578 lines. The exchanges adjoin OIU's present service territory. OIU seeks a waiver to create a new study area consisting of these exchanges. Nevada Bell seeks a waiver to exclude these exchanges from its existing Nevada study area. Nevada Bell states that it will make a permanent downward adjustment to its price cap indices to reflect the sale of these exchanges.[12]

5. OIU states that the existing facilities for the six exchanges are in need of substantial upgrades: 88 of the 578 subscribers receive "toll station" service, meaning that all calls, even within an exchange, are handled over multi-party facilities and billed as toll calls; another 40 subscribers are served on 8-party lines, usually over open wire.[13] OIU also states that there are instances of "self-maintained farmer line" facilities, where the customer provides and maintains facilities to interconnect his telephone with distant telephone company plant, and much of the service, even single-party lines, is subject to circuit noise and service interruption.[14] Finally OIU states, there are many areas within the six exchanges that have no available facilities to serve new or potential customers.[15] The Summit Lake Indian Reservation, for example, has no service at all, OIU states.

6. OIU proposes to add at least 230 lines for new customers, upgrade existing facilities to provide single-party local service (including replacing all toll station, farmer line, and multi-party service), and replace facilities that now provide noisy or interrupted service and are vulnerable to adverse weather conditions.[16] OIU estimates that the construction costs will be in the range of $5-7 million, which would cover the upgrading of substandard facilities and the addition of approximately 230 access lines, primarily in the remote unserved portions of the six exchange area.[17] OIU expects to complete the upgrades within 24 months after the completion of this transaction.[18] OIU estimates that its USF amount at that time will be $381,768 (this figure includes the 578 access lines being acquired and the proposed 230 access lines OIU plans to add),[19] with an average loop cost of $917.[20]

7. OIU argues that there are strong public interest reasons for study area waivers because the unique circumstances of these service areas indicate that OIU is in a better position than Nevada Bell to satisfy these customers' needs and provide a higher level of service. As a result of the lack of modern equipment in these exchanges, petitioners state, subscribers do not have "equal access" or any of the custom calling features currently available in other areas. OIU states that it intends to upgrade service substantially to address this situation.[21]

Pleadings

8. NECA, NTCA, and USTA support the petition, and urge us to grant it expeditiously. AT&T opposes the joint petition on the ground that the petitioners fail to satisfy the standard necessary to support grant of a waiver. AT&T states that the Petitioners' burden is heavy: Petitioners must show good cause, and must demonstrate that the requested relief will not undermine the interests served by the rule.[22] AT&T disputes Petitioners' characterization of the USF impact as minor, stating that these six exchanges presently receive no USF support, so their proposed receipt is a substantial addition to the USF pool. Further, AT&T asserts, USF impact will escalate far beyond the amount the Petitioners suggest.[23] Finally, AT&T notes that previous waiver grants that produced USF impact have relied on the purchasing company to show that a substantial part of the increased cost burdens resulting from upgrades and extensions of service would be borne by the local ratepayer, a showing not made here.[24]

9. NECA replies that AT&T has failed to argue meaningfully against the joint petition, and that it should accordingly be granted.[25] NTCA notes that this transaction is unrelated to the proposed sales of large numbers of exchanges by other companies, and should not be delayed pending investigation of the implications of those sales.[26] USTA asserts that the benefits to be provided existing customers and persons not yet served justify grant of the waiver in its entirety.[27] Petitioners reply to AT&T's opposition that their joint petition meets the separate waiver justification standards established for study area waivers. Petitioners assert that the proposed sale is not designed for the purpose of manipulating the high cost support program, and that it will not undermine the policy served by the study area definition.[28]

Discussion

10. Petitioners' proposals constitute a strong showing that existing and potential customers in these exchanges will be better served by OIU than by Nevada Bell. OIU plans to replace the existing central office switches and associated equipment with digital technology. In addition, the two state commissions involved have expressed their support for the transaction.

11. At the request of Bureau staff, OIU provided estimates of the USF increase based on current upgrade plans. OIU states that with its existing study area plus the

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[12] Letter from W. Gorjance, Nevada Bell, to R. Metzger, Acting Chief Common Carrier Bureau, FCC, dated April 25, 1994 ("Letter from Nevada Bell").

[13] Joint Petition at 5.

[14] *Id.* at 5-6.

[15] *Id.* at 6.

[16] October 29 Supplement at 4.

[17] *Id.* at 2.

[18] *Id.*

[19] *Id.* at Attachment C.

[20] *Id. See also* Letter from J. Beck, Oregon-Idaho Utilities, to K. Nilsson, FCC, dated July 28, 1994 (OIU states that this figure was derived dividing the Unseparated USF cost for the study area by the number of access lines (*i.e.*, $740,622/808 = $916.61)).

[21] *Id.* at 7.

[22] AT&T Opposition at 2.

[23] *Id.* at 4-5, n.9.

[24] *Id.*, citing US West and Gila River Telecommunications, Inc., 7 FCC Rcd 2162, para. 11 (Com. Car. Bur. 1992).

[25] NECA Reply at 4. NECA does not respond to AT&T's assertions of the showing needed to support a waiver, but argues instead that the Commission has established a different standard for study area waivers, and that Nevada/OIU have met that standard. *Id.* at 2.

[26] NTCA Reply at 3.

[27] USTA Reply at 1-3.

[28] *Id.* at 8.

six exchanges being acquired, expanded and upgraded as planned, its USF support would increase to $930,874 from its 1994 USF amount of $549,106.[29] Of the $930,874 in USF support, OIU's planned upgrades will increase the USF payments to OIU by $381,768 per year. We believe that OIU should continue to receive existing USF support (*i.e,* $549,106) and, in addition, should be able to upgrade the facilities that it will acquire and extend service to unserved areas with the help of the USF support for the new study area (*i.e.,* $381,768 per year). AT&T has, however, pointed out that local exchange carrier ("LEC") estimates of USF support payments have, in several cases, grown by unexpected amounts, citing Delta Telephone Company for which USF support grew from $82,500 in 1991 to $396,910 in 1993 and Gila River Telecommunications, Inc. whose USF support jumped from $169,155 in 1992 to $492,300 in 1993.[30] These cases, cited by AT&T, suggest the need to assess OIU's projected increase in annual USF payments circumspectly. Accordingly, the Petitioners' waiver request is granted subject to the condition that the increase in USF payments that result from the upgrading of substandard facilities and the addition of approximately 230 access lines, not exceed $381,768 per annum.[31]

12. Offsetting that increase in USF revenue requirement is a voluntary reduction by Nevada Bell in its price cap indices of $411,000[32] that are related to the interstate revenue requirement that is associated with the sale of these high cost exchanges to OIU. This comparison is, however, misleading. Nevada Bell states that it will adjust its price cap index in 1995, but the USF estimates here are for data that are based on other time periods, and the ratepayers who may receive rate reductions because of the Nevada Bell price cap reduction are not the same ratepayers who will have to make increased USF payments.[33] As a consequence, after carefully reviewing the record before us, we have concluded that the requested study area waiver petition should be granted, subject to the additional condition that Nevada Bell fully document and clearly explain the price cap adjustment that it will make in the filing that proposes the price cap adjustment described here.

13. We reject commenters' assertion that there is a "different standard" for study area waivers than the general waiver standard. Any party requesting a waiver of a rule must show good cause why that waiver should be granted, and must persuade the Commission that the requested relief will not undermine the interests served by the rule.[34] We believe that the Petitioners have provided such a showing. It is clear that the service currently provided through these six exchanges by Nevada Bell is inadequate, and that the facilities are outdated and insufficient. OIU has stated its intention of replacing and upgrading these facilities, and extending service to many residents and businesses as yet unserved.

14. We are also concerned, as is AT&T, about the possibility that this sales and a number of similar proposed transactions could, in the aggregate, have a substantial effect on the size of the USF. This concern has been mitigated, however, by the Commission's adoption of the Joint Board's recommendation for an indexed cap on the USF for the next two years. The Joint Board recommended, and the Commission adopted, interim rules that will limit the growth of the USF to the rate of growth in the total number of working loops nationwide.[35] That rate has generally ranged from two percent to four percent per year. This moderate growth rate will allow the USF to continue to provide adequate support to carriers serving high-cost areas, while preventing excessive USF growth. In the *Interim Order* the Commission also expressed its intention to review the USF rules to determine whether permanent changes are necessary.[36] The Commission began this process on August 2, 1994, when it adopted a Notice of Inquiry to examine the Commission's high cost assistance programs.[37] Pending completion of proceedings to review and revise these rules, however, the interim rules adopted by the Commission will remain in effect. These actions should in the short run also limit any adverse effects on the USF that the proposed study area waiver might cause that have not otherwise been identified.

15. Another aspect of the Petitioners' study area waiver requests warrants discussion. OIU proposes to create a new single, separate study area consisting of the six exchanges, rather than consolidating them with its existing, contiguous study area. This segmentation is apparently at odds with the Commission's frozen study area policy. That policy was established, in part, to prevent carriers from subdividing study areas so as to maximize USF payments.[38] In this case we have determined that the nature of costs of OIU and the six exchanges being purchased are such that establishing the six exchanges as a separate study area (*i.e,* the Humboldt Telephone Company) owned by OIU will not cause an appreciable increase in total USF payments to the affiliated carrier (OIU).[39] OIU states that the few access lines to be served in Oregon (15) are part of a single study

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[29] *See* NECA 1993 USF Report at Section 6 p. 30. OIU estimates its future-period USF draw (including acquisition and upgrades) to be $381,768, for a total of $930,874. *See* October 29 Supplement at Attachment C. (*i.e.,* $381,768 + $549,106 = $930,874).

[30] AT&T Opposition at 4-5, n.9.

[31] See generally para. 6 *infra* and references cited herein. *See also* US West and Wiggins Telephone, *Memorandum Opinion and Order,* 8 FCC Rcd 6229 (Com. Car. Bur. 1993).

[32] Letter from Nevada Bell at 3.

[33] *See generally,* 47 C.F.R. §§ 61.44, 69.5.

[34] 47 C.F.R. §1.3; *WAIT Radio v. FCC,* 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972). The three-part test for a study area waiver (*see* paragraph 3 *supra)* is the part of the standard for determining whether the good cause showing required for all waivers has been made by a petitioner seeking waiver of our study area rules.

[35] Recommended Decision, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, 9 FCC Rcd 334 (1993). Report and Order, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, 9 FCC Rcd 303 (1993) ("Interim Order").

[36] Interim Order at 303.

[37] *See* FCC News Release, Report No. DC-2632, released Aug. 2, 1994.

[38] See *1984 Joint Board Recommended Decision* at para. 65; *1985 Order Adopting Recommendation* at para. 1.

[39] Our studies show that if we grant OIU's request, the total draw on the USF would be only $989 higher than if we deny the request. This figure is calculated by subtracting from the total USF draw for the OIU study area and the six exchanges as a separate study area ($930,874), the total USF draw for the OIU study area combined with the six exchanges being purchased ($929,885). $929,885 is derived by using the Calculation of Expense Adjustment described in 47 C.F.R. § 36.631 and the data contained in the Joint Petition at Attachment C and the National Exchange Carrier Association, Inc. 1993 USF Report at Section 6, p.30. *See also* note 29, *supra* (derivation of $930,874).

area (Nevada Bell's), and are not a separate study area.[40] OIU also states that the historical reason that the 15 access lines in Oregon are owned and operated by Nevada Bell is that those access lines are part of the McDermitt, Nevada community.[41] The town of McDermitt straddles the Oregon and Nevada border, but lies mostly on the Nevada side and the 15 access lines are served from the McDermitt exchange which is in Nevada.[42] For those reasons, OIU may establish a separate Humboldt Telephone Company study area that will include the 15 access lines terminating in Oregon.

16. We conclude, based upon the record before us as a whole, that the Petitioners have made the necessary showings that granting the requested waiver petition would improve customer service and thus promote the public interest. The two state commissions support the waiver, and considering the recent actions by the Joint Board and by the Commission, we expect that granting this waiver will impose no significant adverse effect upon the USF. Therefore, we grant the study area waiver petition to permit Nevada Bell to exclude the six exchanges from its Nevada study area and to permit OIU to create a new study area for the purchased exchanges.

III. PRICE CAPS PETITION

Petition

17. The all-or-nothing rule provides that when a non-price cap company acquires a price cap company or any part thereof, the acquiring company shall become subject to price cap regulation.[43] The joint petition also requests waiver of this rule so that OIU can continue to participate in NECA pools following acquisition of the six exchanges from Nevada Bell.

18. Under the all-or-nothing rule, OIU's acquisition of the six subject exchanges obligates it to exit the NECA pools and become subject to price cap regulation. OIU requests a waiver of this rule, alleging that the rule's application here would be contrary to the public interest. OIU states that it plans a construction program to provide single-party and substantially upgraded service to all of its customers, and that it will be providing service to new customers who have not had telephone service before.[44] OIU contends that the NECA pools offer substantial efficiencies through centralized tariff filing and maintenance that would be lost if OIU were forced to operate as a separate small carrier under the price cap rules designed for the largest LECs.

Discussion

19. The Commission's rules governing mergers and acquisitions provide that when a rate of return company and a price cap company merge, or when one company acquires the other, the resulting company must comply with price cap regulation within a year of the transaction.[45] The rationale for this rule is stated in the *LEC Price Cap Reconsideration Order*. First, in the absence of the rule, a company might attempt to shift its costs from its price cap affiliate to its rate of return affiliate, allowing the rate of return affiliate to earn more (because of its greater revenue requirement) without affecting the earnings of the price cap affiliate (*i.e.*, without triggering the sharing mechanism). Second, if a LEC were allowed to go back and forth between rate of return regulation and price cap regulation, it could "game the system" by, for example, building a large rate base under rate of return regulation, then choosing price caps again and cutting its costs to an efficient level.[46] The Commission stated, however, that "in some cases, the efficiencies created by the purchase and sale of [a few] exchanges may outweigh the threat of 'gaming the system.' Such cases might justify narrow waiver of the all or nothing rule."[47]

20. There is good cause to grant OIU a waiver of the all or nothing rule. The first concern cited by the Commission -- cost-shifting between affiliates -- does not apply to OIU. OIU is not seeking to maintain separate affiliates under different systems of regulation. Moreover, except for the exchanges it has sold to OIU, Nevada Bell remains regulated under price caps, and Nevada Bell has stated that it will adjust its price cap index to reflect the reductions in its interstate revenue requirements that will result from the sale of the six exchanges to OIU.[48] Under these circumstances, we find these representations, in light of the other evidence of record, to be sufficient to grant the joint petition to the extent stated above.

21. We therefore grant a waiver of the all or nothing rule to OIU. For the present, OIU will be regulated under rate of return. As with any other rate of return carrier, OIU may elect price cap regulation in the future, provided it withdraws from the NECA pools.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c) and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, that the Joint Petition of Nevada Bell and Oregon-Idaho Utilities, Inc. for waiver of Part 36, Appendix-Glossary, of the Commission's rules, 47 C.F.R. Part 36 Appendix-Glossary, IS GRANTED subject to the conditions set forth above.

23. IT IS FURTHER ORDERED that the Petition of Oregon-Idaho Utilities, Inc. for waiver of Part 36, Appendix-Glossary, of the Commission's Rules, 47 C.F.R. Part 36, Appendix-Glossary, IS GRANTED as to the establishment of a separate study area containing the acquired exchanges.

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[40] May 18 Supplemental at 1.
[41] *Id.*
[42] *Id.*
[43] 47 C.F.R. § 61.41(c)(2). Section 69.3(e)(11) states that "any changes in Association common line tariff participation and Long Term and Transitional Support resulting from the merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following consummation of the merger or acquisition transaction. . . ."
[44] Joint Petition at 5-7.
[45] Second Report and Order, 5 FCC Rcd 6786, 6821 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), *modified on recon.* 6 FCC Rcd 2637 (1991) (*LEC Price Cap Reconsideration Order*), *petitions for further recon. pending, appeal docketed sub nom. D.C. PSC v. FCC*, No. 91-1279 (D.C. Cir. June 14, 1991).
[46] *LEC Price Cap Reconsideration Order*, 6 FCC Rcd 2637, 2706.
[47] *Id.* at note 207.
[48] Letter from Nevada Bell.

24. IT IS FURTHER ORDERED that the Petition of Oregon-Idaho Utilities, Inc., for waiver of Section 61.41(c)(2) of the Commission's Rules, 47 C.F.R. §61.41(c)(2), IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief (Policy)
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

DANNY'S TWO WAY COMMUNICATIONS, INC. d/b/a DAN COMM PAGING

File No. 24956-CD-P/01-90

For facilities in the Public Land Mobile Service at Middletown, Ohio

ERRATUM

Released: September 20, 1994

The Memorandum Opinion and Order (FCC 94-160) released July 8, 1994, is corrected by changing the "By the Commission" line to read Commissioners Ness and Chong not participating.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

NEW JERSEY BELL TELEPHONE COMPANY AMENDMENT OF VIDEO DIALTONE APPLICATION W-P-C 6838

Released: September 14, 1994

On September 13, 1994, New Jersey Bell Telephone (Bell Atlantic-New Jersey) filed an Amendment to its Section 214 Application filed November 16, 1992, as Amended September 2, 1993, for authorization to construct, operate, own and maintain advanced fiber optic facilities and equipment to provide video dialtone service within a geographically defined area in the municipalities of Florham Park Borough, Madison Borough, and Chatham Borough, New Jersey.

Bell Atlantic-New Jersey, Inc. has filed this second Amendment to video dialtone application W-P-C 6838, captioned New Jersey Bell Telephone, to reflect the fact that the incumbent cable operator, described in the original and amended application, has terminated its contract to purchase capacity on this system.

Interested parties may file comments within 15 days of the release of this public notice.

All filings should refer to the file number, W-P-C 6838, and an original and five copies should be sent to William F. Caton, Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of the New Jersey Bell Telephone Company (Bell Atlantic-New Jersey) Amendment may be obtained from International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, 202/857-3800, facsimile 202/857-3805.

The filing also is available for review and photocopying at the FCC Public Reference Room, 6th Floor, 2025 M Street, N.W., Washington, D.C., from 8:30-12:30 and 1:30-3:30, Monday through Thursday.

For further information, contact Greg Lipscomb at 202/418-1588.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: September 13, 1994

BELLSOUTH PETITIONS FOR WAIVER OF SECTION 69.4 FOR NEW OPERATOR-ASSISTANCE SERVICES

Pleading Cycle Established

COMMENTS: October 12, 1994
REPLY COMMENTS: October 26, 1994

On August 26, 1994, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for waiver of Section 69.4(b) of the Commission's Rules, 47 C.F.R. §69.4(b), to permit the establishment of rate elements for a group of new operator-assistance services to be known collectively as "Operator Plus."

BellSouth states that it proposes to offer various operator call handling and billing functions to interexchange carriers (IXCs) for their use in completing and billing interLATA calls. It asserts that no interLATA call transport will be provided in conjunction with the proposed service. BellSouth states that a waiver of Part 69 of the Rules is necessary to establish new rate elements for the recovery of costs associated with Operator Plus service.

BellSouth states that upon grant of the waiver it will adopt the following rate elements for Operator Plus: (1) Automated Call Processing; (2) Operator Assistance Call Processing; (3) Call Recording; and (4) Message Rating. In addition, the following three nonrecurring charges would apply to Operator Plus service: (1) Call Branding; (2) Access Order Charge; and (3) Service Modifications. BellSouth believes that entry into this market will stimulate further competition by offering new alternatives to IXCs who currently provide -- or contemplate providing -- operator assistance features as a part of their total service offering.

Interested parties may file comments on BellSouth's petition no later than October 12, 1994. Replies should be filed by October 26, 1994.

An original and four copies of all comments and replies must be filed in accordance with Section 1.51(c) of the Commission's Rules. 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its offices at 2100 M Street, N.W., Washington, D.C. 20554.

For further information, contact Wanda M. Harris, Tariff Division, Common Carrier Bureau, (202) 418-1530.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-37

In the Matter of

Amendment of Section 73.202(b),	RM-8449
Table of Allotments,	
FM Broadcast Stations	
(Lihue Kauai, Hawaii)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 14, 1994; Released: September 21, 1994

By the Acting Chief, Allocations Branch:

1. Pursuant to the request of Linohau Entertainment ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC 2302 (1994), proposing the allotment of Channel 251C to Lihue Kaua, Hawaii, as that community's third local FM service. Petitioner filed comments restating its intention to apply for Channel 251C, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 251C to Lihue Kauai as that community's third local FM service. Channel 251C can be allotted to Lihue Kauai in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at city reference coordinates.[1]

3. Accordingly, pursuant to the authority contained in Sections (4i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 7, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Lihue Kauai, Hawaii	228C1, 245C1, 251C

4. The window period for filing applications will open on **November 7, 1994**, and close on **December 8, 1994**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 251C at Lihue Kauai are North Latitude 21-58-48 and West Longitude 159-22-30.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-50

In the Matter of

Amendment of Section 73.202(b),	RM-8458
Table of Allotments,	
FM Broadcast Stations	
(Galatia, Illinois)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 14, 1994; Released: September 21, 1994

By the Acting Chief, Allocations Branch:

1. Pursuant to the request of Michael Scott Clem ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC 2760 (1994), proposing the allotment of Channel 255A to Galatia, Illinois, as that community's first local FM service. Petitioner filed comments restating its intention to apply for Channel 255A, if allotted.[1] Lynn O. Turner also filed supporting comments.

2. We believe the public interest would be served by allotting Channel 255A to Galatia, since it could provide a first local FM service to that community. As indicated in the *Notice*, Channel 255A can be allotted to Galatia in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.8 kilometers (0.5 miles) northwest,[2] in order to avoid a short-spacing to the licensed site of Station WKDQ(FM), Channel 258C, Henderson, Kentucky.

3. Accordingly, pursuant to the authority contained in Sections (4i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 7, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Galatia, Illinois	255A

4. The window period for filing applications will open on **November 8, 1994**, and close on **December 8, 1994.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] In response to the *Notice*, Petitioner provided information verifying the statements in his petition.

[2] The coordinates for Channel 255A at Galatia, Illinois, are North Latitude 37-50-53 and West Longitude 88-37-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

FOX TELEVISION STATIONS INC.

Licensee of Television Station
WNYW, New York, New York

Request for waiver of the
Broadcast-Newspaper Cross-Ownership
Rule, Relating to WNYW and
the New York Post

ERRATUM

Released: September 21, 1994

This document corrects the FCC Record at 8 FCC Rcd 5341. The separate statement of Chairman James H. Quello was inadvertently omitted at the time of printing.

FEDERAL COMMUNICATIONS COMMISSION

Separate Statement
of
Chairman James H. Quello

In the Matter of Fox Television Stations, Inc., Licensee of Television Station WNYW, New York, NY, Request for Waiver of the Broadcast-Newspaper Cross-Ownership Rule Relating to WNYW and the *New York Post*.

I support this decision completely. On the facts presented here, waiver of the cross-ownership rule is necessary to maximize the number of information sources available to the public.

Consider the following: The imminent demise of a major metropolitan newspaper carries with it an inherent loss of diversity.[1] Applying the rule in this case significantly increases the risk that the newspaper will fold. Therefore, granting the waiver promotes diversity, which is, after all, the ultimate purpose of the rule.[2]

To me, this represents a classic statement of the standard under *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), that sound administrative practice contemplates rule waivers where strict compliance would be inconsistent with the public interest.

But far more than our general obligation to consider waivers is implicated here. When the Commission adopted the cross-ownership rule at issue, we "expressly contemplated waivers for newly created combinations brought about through a television licensee purchasing a daily newspaper."[3] I know this to be the case, because I was here at the time. Indeed, the rule was carefully crafted — with possible waivers in mind — to prevent not just the loss of media outlets, but to take into account business conditions that would affect overall service to the public.

For example, the Commission declined to order divestiture wherever there was common ownership of a newspaper and a broadcast station, but opted for this extreme remedy only in 16 "egregious cases." *Second Report and Order*, 50 F.C.C.2d at 1080. We recognized that diversity would not be enhanced by mechanical adherence to separate ownership as an "abstract goal alone," and thus sought to avoid "disruption for the industry and hardship for individual owners." *Id.* at 1078. Failure to incorporate these practical considerations into the decision would have led to "losses or diminution of service to the public." *Id.* at 1080.

Even in "egregious cases," licensees were given five years to divest either the broadcast station or the newspaper so as to minimize disruption. This transition period was chosen to balance "the private equities involved and the need for such dispatch as circumstances allow." *Id.* at 1084 n.40.

Notwithstanding the lengthy phase-in period, we understood that the goal of enhancing diversity "could be thwarted" if appropriate protections were not included to prevent business losses. Accordingly, we described "some of the circumstances" in which waivers might be granted. They included situations where the owner could not sell the newspaper or broadcast station, where sale was possible only at an

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[1] This statement seems so obvious as to be beyond dispute. But even this point has been muddied by some commenters in this proceeding, as I explain in greater detail *infra*. Briefly, however, the policy of the cross-ownership rule hinges on a "diversity approach [that] examine[s] the number of voices available to the people of a given area." *Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, 50 F.C.C.2d 1046, 1079 (1975) ("*Second Report and Order*"). One less newspaper equals one less voice which means less diversity. Q.E.D.

[2] As the Commission has pointed out, allowing a newspaper to fail because of strict application of the cross-ownership rule "would be inconsistent with our fundamental objective of maximizing the opportunity for competition by encouraging numerous voices among the community's media outlets." *Crosby N. Boyd*, 57 F.C.C.2d 475, 483 (1976). Although the Commission granted only a temporary waiver in *Crosby N. Boyd*, that case did not involve a bankruptcy, as does the instant proceeding.

[3] *Health and Medicine Policy Research Group v. FCC*, 807 F.2d 1038, 1041 n.4 (D.C. Cir. 1986); *Crosby N. Boyd*, 57 F.C.C.2d at 483.

artificially depressed price or where separate ownership of the newspaper and the station could not be supported in a given locality. *Id.* at 1085.

It was evident at the time that the Commission could not anticipate every factual setting in which waiver might be warranted. Thus, the *Second Report and Order* held out the possibility of waivers "if it could be shown for whatever reason that the purposes of the rule would be disserved by divestiture" or if the rule "would be better served by continuation of the current ownership pattern." Such waivers, the Commission noted, could be "either permanent or temporary." 50 F.C.C.2d at 1085.

The Supreme Court expressly upheld the Commission's balanced approach to maximizing diversity, in which common ownership was expressly permitted where appropriate. In fact, the Court was "unable to find anything in the Communications Act, the First Amendment, or the Commission's past or present practices that would require the Commission to 'presume' that its diversification policy should be given controlling weight in all circumstances." *FCC v. National Citizen's Committee for Broadcasting*, 436 U.S. 775, 810 (1978). The Court noted that the Commission's decision to permit joint newspaper-broadcast ownership and to avoid business disruption "was founded on the same assumption that underpinned the diversification policy itself . . . — that the greater number of owners in a market, the greater the possibility of achieving diversity of program and service viewpoints." *Id.* at 814.

More importantly, the constitutionality of the cross-ownership rule may depend on the Commission's ability to grant waivers in appropriate cases. The Court upheld the rule as "a reasonable means of promoting the public interest in diversified mass communications" under the First Amendment. *Id.* at 802. But it added that "[t]he reasonableness of the regulations as a means of achieving diversification is underscored by the fact that waivers are potentially available from both the prospective and the divestiture rules in cases in which a broadcast station and a co-located daily newspaper cannot survive without common ownership."[4]

I wonder how understanding the Court would be if the Commission were to accept the suggestions of some that we have limited or no authority to grant a waiver in the circumstances before us.

More troubling to me are the arguments made by some commenters that diversity would be enhanced and the public interest would be served by the death of the *New York Post*. This "less-is-more," "destroy the village in order to save it" mentality reminds me of the argument advanced by the claimant before Solomon that justice would be served by snuffing out the life of a baby.

Assertions that we may enhance diversity by thinning the number of media outlets are disconnected from even the most rudimentary rules of logic. They also are contrary to law.

Several commenters and letter writers point to the programming of WNYW(TV) and the editorial policies of the *New York Post* as a reason to deny the waiver. The National Black Media Coalition, for example, asserts that the *Post* has a policy to "attack and denigrate African Americans and their institutions and community." NBMC Comments at 4. The National Association of Black Owned Broadcasters adds that "the perception of the *New York Post* as a racist newspaper has some African-American leaders suggesting that the *New York Post's* demise might be a positive benefit for the African-American community." NABOB Reply Comments at 4.

Quite simply, such arguments can play no role in our decision. To suggest that Murdoch should be denied the waiver because of his purported views (or because of the purported editorial policies of the *Post*) is an argument that

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[4] *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. at 802 n.20. Contrary to the suggestions of some commenters in this proceeding, the Commission and the Supreme Court clearly contemplated the possibility of permanent waivers to permit new newspaper-broadcast combinations. *See id.* at nn. 9, 11.

is unsupported by the cross-ownership rules,[5] antithetical to the Constitution and unworthy of our serious consideration. As the Supreme Court has made clear, "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment."[6] Indeed, both the Court of Appeals and the Supreme Court emphasized that application of the cross-ownership rule cannot be based upon a party's "political, economic or social views."[7]

Other parties argue that diversity may benefit from the death of the *Post*, because "the demise of a newspaper often opens a void into which other media, and other voices readily go."[8] For example, The Conference argues that "[a]dvertisers need outlets, and without the *Post*, someone will find a way to service their needs." Conference Comments at 53. It points out that when the *New York Daily News* ceased publication during a strike, "weekly newspapers did better, and the other daily newspapers . . . did much better financially and thus were better able to serve their readers."[9] The Conference further suggests that additional publications may "rise from the ashes of old voices" and that "new media forms," such as electronic newspapers, may emerge from the *Post's* demise. *Id.* at 54.

Of course, it is utterly speculative whether sacrificing the *New York Post* would generate a subsequent growth in other outlets. Given the general decline in the number of daily newspapers in this country, I tend to doubt it.[10] In any event, such suppositions are immaterial to our analysis under the cross-ownership rule. The *Second Report and Order* concluded that "a mere hoped for gain in diversity is not enough" and that the rule would not tolerate disrupting existing media outlets "on some theoretical increase in already existing diversity which might follow." 50 F.C.C.2d at 1078, 1083.

On the record before the Commission, there is no question but that granting the waiver provides the best chance of maximizing the diversity of media outlets in the New York market. However, opponents of the waiver have argued that the Commission should have held an evidentiary hearing. I can well understand their desire for such a time-consuming procedure, since ordering a hearing in this case would, as a practical matter, be the same as denying the request.

Significantly, the Commission emphasized from the beginning that hearings are not required to grant a waiver. In the *Second Report and Order*, the Commission "ma[d]e it clear that we do not contemplate holding evidentiary hearings on the individual waiver requests unless there are

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[5] *Second Report and Order*, 50 F.C.C.2d at 1085 ("The rules are not in the least premised on the existence of improprieties in the operation of the media holdings.").

[6] *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976).

[7] *FCC v. National Citizens Committe for Broadcasting*, 436 U.S. at 801, quoting *National Broadcasting Co. v. United States*, 319 U.S. 190, 226 (1943). *See id.* (cross-ownership rules are consistent with First Amendment because "the regulations are not content related"). *See also National Citizens Committee for Broadcasting v. FCC*, 555 F.2d 938, 953-954 (D.C. Cir. 1977) (because the cross-ownership ban does not "restrict or control the content of free speech, the ban would not violate the First Amendment rights of newspaper owners").

[8] Comments of the New York State Conference of Branches of the NAACP at 53 (Conference Comments). The Conference asserts that its goal "is not to secure the demise of the *Post*," id. at 55, but its cavalier attitude toward termination of the *Post* and its 700-odd employees suggests otherwise. *See, e.g., id.* at 13 ("A sick local newspaper presents no national crisis."); *id.* at 55 n.46 ("There is little magic in the fact that the *Post* happens to be the nation's oldest newspaper. . . . The *Post* is not a bald eagle or a manatee; it is not even a snail darter.").

[9] Apart from the fact that the public interest in diversity has never been defined as a fewer number of media outlets with better advertising bases, it is noteworthy that this argument reveals the commenter's direct financial interest in this proceeding. Wilbert A. Tatum, who joined in the Conference Comments, is publisher of the *New York Amsterdam News*, a weekly newspaper that presumably would do "much better financially" if the *Post* were to fold.

[10] At least 115 daily newspapers have failed in the past five years. *See* Fox Request for Waiver of the Newspaper/Broadcast Cross Ownership Rule at 22 n.28 & Appendix Q.

I have examined these comments as well as all the facts relevant to this proceeding. I have analyzed those facts pursuant to the applicable law of recusal of administrative officials, and concluded that the recusal request in this case is utterly meritless and may fairly be characterized as frivolous. Accordingly, I decline to recuse myself.

At the outset, I think it is important to engage in a more complete discussion of the applicable law than the Conference found to be necessary. As the comments noted, *Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970) held that a commissioner should be recused if "a disinterested observer may conclude that [the decisionmaker] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." Conference Comments at 15. But this was both the beginning — and the end — of commenter's analysis of the standard for recusal.

To the extent commenters choose to rely on *Cinderella Career & Finishing Schools* as the controlling case, it is important to consider the facts. There, the Chairman of the FTC gave a speech that referred to a specific pending case and outlined his detailed views as to the merits.[14] Chairman Dixon gave that speech after a hearing examiner had issued a 93-page opinion dismissing charges that Cinderella Career & Finishing Schools had engaged in false, misleading and deceptive advertising. Subsequently, the full Commission reversed the hearing examiner's factual findings without explanation.[15]

While the case was on review, Chairman Dixon gave yet another speech in which he concluded that the exact advertising practices at issue were deceptive. Additionally, he repeatedly had been found to have prejudged FTC cases before the *Cinderella* decision.[16] In fact, the court noted "Mr. Dixon's flagrant disregard of prior decisions" and said that it would "spell out [the law] for him once again . . . in the fervent hope that this will be the last time we have to travel this wearisome road."[17]

Cinderella and subsequent decisions make clear that a number of conditions must be met to justify recusing an administrative officer. First, parties seeking recusal must point to a specific statement that clearly shows prejudgment of both the facts and the law of a given case. Second, the statements must be viewed in the context of the entire proceeding. And third, the statements must be analyzed from the perspective of a disinterested observer. The Conference request fails all three tests.

The Conference recusal demand falls far short of even the threshold issue — there simply are no statements to suggest that I prejudged the

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can be expected of a public official." Supplement to Conference Comments at 3.

What a relief. Assuming the same logic applies to the press reports relating to my participation in this matter (conditioned, of course, on an explanation that pleases the Conference) then I need only explain one other article in which I supposedly was "directly quoted . . . essentially endorsing the waiver." *Id.* at 2. An explanation appears *infra*, which I assume is acceptable to the commenters, since they acknowledge that the "personal and professional integrity of both gentlemen [Commissioner Duggan and myself] is above reproach." Conference Comments at 15.

[14] *Cinderella Career & Finishing Schools*, 425 F.2d at 589-90. *See Association of National Advertisers v. FTC*, 627 F.2d 1151, 1172 n.52 (D.C. Cir. 1979), *cert. denied*, 447 U.S. 921 (1980) ("In *Cinderella*, Chairman Dixon had referred specifically to the adjudication pending before the Commission and had prejudged precise factual issues.").

[15] *Cinderella Career & Finishing Schools*, 425 F.2d at 585.

[16] In *Texaco, Inc. v. FTC*, 336 F.2d 754, Chairman Dixon "castigated Texaco as one of a number of companies engaging in price fixing and price discrimination" while the case was pending before hearing examiner after remand by the Commission. *See Antonio v. SEC*, 877 F.2d 721, 725 (8th Cir. 1989), *cert. denied*, 110 S. Ct. 1296 (1990). In *American Cyanamid v. FTC*, 363 F.2d 757 (6th Cir. 1966), the court reversed an FTC decision to prohibit production and sale of the "wonder drug" tetracycline where Chairman Dixon, as counsel for a senate subcommittee, previously had investigated the same facts and issues involving the same parties.

[17] 425 F.2d at 591.

facts and the law of this case.[18] I approached this request — as I do all cases before the Commission — with an open mind and a willingness to look at the arguments presented in the record. Indeed, the Conference acknowledges that I have "displayed [an] open mind[] on related subjects before." Conference Comments at 14.

But other than the zeal to obtain a desired outcome, it is difficult to understand what convinced the Conference that this case would be different. Certainly there is nothing convincing in the "evidence" presented. It is important to note, for example, that the Conference's charge of prejudgment is based entirely on a few scattered press reports, rather than any actual statements by me.[19]

Beyond these considerations, the cited passages from the articles hardly suggest prejudgment either by me or by the Commission. The Conference demand is based entirely on three articles.[20] The first, from the March 26 issue of the *New York Times*, quotes News Corp.'s General Counsel as representing to the bankruptcy court that the company has received "sufficient assurance" that the waiver "can be obtained from the F.C.C."[21] Suffice it to say that the company received no assurances of any kind from me.[22] In fact, nothing in the article (or in the bankruptcy hearing upon which it is based) suggests that assurances were received *from the FCC*. For all I know, the company may have received assurances from its lawyers that Commission precedent supports granting a waiver.

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[18] *See, e.g., Committee of 100 on the Federal City v. Hodel*, 777 F.2d 711, 721 (D.C. Cir. 1985). *See also American Medical Assn. v. FTC*, 638 F.2d 443, 448-49 & n.4 (2d Cir. 1980), *aff'd*, 455 U.S. 676 (1982); *Kennecott Copper Corp. v. FTC*, 467 F.2d 67 (10th Cir. 1972), *cert. denied*, 416 U.S. 909 (1974).

[19] News articles normally are not considered as evidence in our proceedings. *See KRPL, Inc.*, 67 R.R.2d 1172 (1990); *News International, PLC*, 97 F.C.C.2d 349, 358 (1984); *Mississippi Authority for Educational Television*, 47 R.R.2d 1359 (1980), *recon. denied*, 48 R.R.2d 1448 (1980). *See also Washington Star Communications, Inc.*, 54 F.C.C.2d at 684-86; *Jimmie H. Howell*, 45 F.C.C.2d 50, 57-58 (1974); *CBS, Inc.*, 49 F.C.C.2d 743, 745 (1974).

[20] The Conference also stated that "Chairman Quello reportedly told representatives of the National Black Media Coalition that he was predisposed to the other side's position. *See* Comments of NBMC *et al.*, which Petitioners understand are to be filed this date." Conference Comments at 17. As indicated *supra* note 12, the Conference was mistaken in its expectation regarding the NBMC comments. I can only assume that the Conference is referring to a meeting that is described in an article published in Petitioner Tatum's *New York Amsterdam News*. The article suggested that the waiver proceeding was the product of a conspiracy involving Murdoch, me, and the bankruptcy court, and that others, including the New York City Police Department, Mayor Dinkins, Governor Mario Cuomo, Senator Edward Kennedy and "everyone else" had been intimidated into inaction. *See* "CEMOTAP Charges Fraud and Collusion," *New York Amsterdam News*, May 1, 1993 at 13. It referred to a meeting in which members of the Committee to Eliminate Media Offensive to African People (CEMOTAP) and NBMC urged the Commission to deny the waiver request because of what they viewed as objectionable media coverage by Murdoch and the *Post*. As already discussed, I do not view the editorial policies of a media outlet an acceptable ground for deciding a waiver case. *See* discussion *infra*. The groups also objected to the need to actually file comments in the proceeding. In any event, the article acknowledges that the groups were informed by the Commission's General Counsel, who was present at the meeting, that "'all' of CEMOTAP's 'charges would be considered' if they were put in an official petition." *Id.*

[21] Conference Comments at 15-16. *See* Caucus Comments at Appendix A reprinting excerpts from the transcript of a March 23, 1993 bankruptcy court hearing. That hearing was the source of the *New York Times* quotation. In describing the proposed management agreement, Arthur Siskind, General Counsel of News Corp., made the following representation to the court: "We are prepared to extend that sixty-day period [of the management agreement] to ninety days if the extension is required to obtain the FCC waiver. Now in this regard, Your Honor, we have received sufficient assurances at this point that we are prepared to make this offer, sufficient assurances that the waiver can be obtained from the FCC."

[22] Commissioner Duggan likewise noted that he had "no idea what formed the bases for these reports. The stories certainly were not based on any statement from me." Statement of Commissioner Ervin Duggan (May 13, 1993). The Conference deemed this explanation to be acceptable. Supplement to Conference Comments at 3.

The second article the Conference cites is a March 29, 1993 piece in *Broadcasting and Cable* that states that I would "have no objections" to a waiver request. Conference Comments at 16. Of course, the cited article merely indicates my willingness to consider a waiver request, as is my duty under *WAIT Radio v. FCC* and the *Second Report and Order* on the cross-ownership rules. It does not suggest prejudgment, particularly since the Commission actively solicited oppositions to the request. The fact that a one paragraph blurb in *Broadcasting* omitted references to my repeated admonitions that any decision would be based on the entire record is no basis for recusal.[23]

Finally, the Conference points to an April 19 article in *Broadcasting and Cable* reporting that Commissioner Duggan and I supported the waiver. But that article stated: "Although the comments on Murdoch's waiver are due April 26, that may be extended to May 10 because of a request by the National Hispanic Media Coalition, New York Chapter, which is expected to fight the request."[24] As it turned out, the deadline was extended and opposition comments were fully considered.

Even if isolated press reports were relevant to the recusal request, the demand must be evaluated from the perspective of "a realistic observer . . . who troubles to equip himself with all the facts bearing on the circumstances" of the case. *Schurz Communications, Inc. v. FCC*, No. 91-2350 (7th Cir. Nov. 23, 1992). Any realistic (or disinterested) observer of the current proceeding would be fully satisfied that the process was fair to all parties.

First, even though the Commission was not required to put the waiver request on Public Notice, we expressly opened a proceeding so as to fully consider all viewpoints.[25] Second, the Commission extended the deadline for comments and decided to consider unauthorized oppositions over the objections of Fox.[26] Finally, the Commission fully articulated the reasons for its decision (as I have likewise done in this Statement), taking into account the comprehensive record before it.[27]

I have provided a more detailed response than is warranted by the facts presented here because any demand for recusal is a very serious matter. Arguing that a decisionmaker "improperly participated in a case from which he or she should have recused constitutes a charge most grave." *Maier v. Orr*, 758 F.2d 1578, 1583 (Fed. Cir. 1985). To do so without a valid basis or for tactical reasons "trifle[s] with the . . . administration of justice." and "exceeds the bounds of advocacy open to counsel as officers of the court." *Id.* at 1584.

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[23] A more comprehensive report appeared in *Variety*. While it suggested that "the FCC is sending signals that the waiver would be approved," it went on to note: "On Friday, however, the FCC issued an order asking Murdoch to provide more details by Tuesday. . . . Further, the FCC granted the National Hispanic Media Coalition's request to extend to May 10 the deadline for parties to file comments of support or opposition for Murdoch's bid to buy the Post." Wharton, "FCC Wants Post Details From Murdoch," *Daily Variety*, April 19, 1993.

[24] *See* "Mr. Murdoch Comes to D.C.," *Broadcasting and Cable*, April 19, 1993 at 103. The Conference has agreed that this article does not provide a basis for recusing Commissioner Duggan. Supplement to Conference Comments at 3.

[25] Public Notice, DA 93-432 (released April 12, 1993). It is significant that the same court that recused Chairman Dixon found no problem when the situation was clear that the agency would consider all views. Thus, the court approved an FTC press release describing "suspected violations" by Cinderella Career & Finishing Schools but acknowledging that guilt had not yet been established. *FTC v. Cinderella Career & Finishing Schools, Inc.*, 404 F.2d 1308 (D.C. Cir. 1968).

[26] *Order*, DA 93-458 (released April 16, 1993); *Declaratory Ruling* at n.1. We decided to consider unauthorized pleadings "in order that we may develop the fullest record possible." *Id.*

[27] This situation is a far cry from the facts in *Cinderella*. That case "concerned the power of the Commission, sitting as a reviewing body, to reverse factual findings of a hearing examiner without explaining the reasons for doing so. *Cinderella Career* has no bearing on a case, such as the present one, in which the Commissioners . . . thoroughly explain their view of the evidence." *See American Home Products Corp. v. FTC*, 695 F.2d 681, 686-87 n.8 (3d Cir. 1982).

Although the Conference requested recusal with what it described as "the greatest reluctance, regret and respect," it nonetheless filed a pleading that Commissioner Duggan characterized as "vague and flimsy." I agree with his assessment. And I would have expected the Conference to be more sensitive to the need for some foundation before making a serious and inaccurate accusation, since its comments demonstrated knowledge of the Commission's abuse of process standards.[28]

For the foregoing reasons, I vote to support the request for a permanent waiver of the broadcast-newspaper cross-ownership rule, and decline to recuse myself from the proceeding.

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[28]The Conference noted in its comments that "[a]buse of process 'is a broad concept that includes use of a Commission process to achieve a result that the process was not intended to achieve or use of that process to subvert the purpose the process was intended to achieve.'" Conference Comments at 81, quoting *Evansville Skywave, Inc.*, 7 FCC Rcd. 1699, 1702 n.8 (1992). *See generally Garden State Broadcasting Limited Partnership v. FCC*, No. 91-1043 (D.C. Cir. June 29, 1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-12

In the Matter of

Amendment of Section 73.202(b), RM-8419
Table of Allotments,
FM Broadcast Stations
(Sebastian, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 14, 1994; Released: September 21, 1994

By the Acting Chief, Allocations Branch:

1. Pursuant to the request of T & M Communications ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC 1027 (1994), proposing the allotment of Channel 240C3 to Sebastian, Florida, as that community's first local aural transmission service. Petitioner filed comments restating its intention to apply for Channel 240C3, if allotted.[1] No other comments were received.

2. We believe the public interest would be served by allotting Channel 240C3 to Sebastian, since it could provide a first local aural transmission service to that community. As indicated in the *Notice*, Channel 240C3 can be allotted to Sebastian in compliance with the Commission's minimum distance separation requirements without a site restriction.[2] We note that the transmitter site is located within 80 kilometers of the Federal Communications Commission's monitoring station at Vero Beach, Florida. Therefore, petitioner should refer to the provisions of Section 73.1030(c)(1)-(5) of the Rules governing protection of Federal Communications Commission Monitoring Stations.

3. Accordingly, pursuant to the authority contained in Sections (4i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 7, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Sebastian, Florida	240C3

4. The window period for filing applications will open on **November 8, 1994**, and close on **December 8, 1994**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] Petitioner states that the Commission incorrectly cited the reference coordinates proposed in its Petition for Rule Making. The Commission cited the city reference coordinates for Channel 240C3 at Sebastian which are North Latitude 27-49-00 and West Longitude 80-28-12. Petitioner proposed coordinates North Latitude 27-49-00 and West Longitude 80-28-00. However, the Commission generally does not protect a prospective applicant's desired transmitter site for a new allotment, since there is no guarantee that the petitioner will ultimately become the licensee. Therefore, we will not consider petitioner's proposed site and advance the city reference coordinates for the allotment of Channel 240C3 at Sebastian.

[2] The coordinates for Channel 240C3 at Sebastian are North Latitude 27-49-00 and West Longitude 80-28-12.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-13

In the Matter of

Amendment of Section 73.202(b),	RM-8431
Table of Allotments,	
FM Broadcast Stations	
(Agana, Guam)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 14, 1994; Released: September 21, 1994

By the Acting Chief, Allocations Branch:

1. Pursuant to the request of Inter-Island Communications, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC Rcd 1029 (1994), requesting the allotment of Channel 275C to Agana, Guam, as that community's sixth local FM service. Petitioner filed comments restating its intention to apply for Channel 275C, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 275C to Agana, Guam, since it could provide that community with its sixth local FM service. Channel 275C can be allotted to Agana in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

3. Accordingly, pursuant to the authority contained in Sections (4i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 7, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Agana, Guam	230C2, 238C2, 248C2, 262C2, 270C2, 275C

4. The window period for filing applications for Channel 275C, Agana, Guam, will open on **November 8, 1994**, and close on **December 8, 1994**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 275C at Agana, Guam are North Latitude 13-28-27 and West Longitude 144-44-52.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Release Date: September 22, 1994

IN THE MATTER OF ALLTEL SERVICE CORPORATION, PETITION FOR WAIVER OF DEFINITION OF "STUDY AREA" CONTAINED IN PART 36, SUBPART H, APPENDIX-GLOSSARY OF THE COMMISSION'S RULES
AAD 94-115

Comment Date: October 3, 1994
Reply Date: October 17, 1994

On August 22, 1994, ALLTEL Service Corporation ("ALLTEL"), on behalf of its telephone operating affiliates, ALLTEL Carolina, Inc. ("ALLTEL Carolina"), Heins Telephone Company ("Heins"), and Sandhill Telephone Company, Inc. ("Sandhill"), filed a petition for waiver of the definition of "Study Area" as set forth in Part 36, Subpart H, Appendix-Glossary of the Commission's rules. This waiver would allow the petitioners to reflect changes in their study area boundaries that would result from the consolidation of the ALLTEL Carolina study area with the study area of Heins and the study area of Sandhill in connection with the merger of these three companies. ALLTEL states that this transaction is pending before the North Carolina Utilities Commission.

Interested parties may file comments on this petition on or before **October 3, 1994**, and reply comments on or before **October 17, 1994**, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Comments and reply comments should also reference AAD 94-115. Four (4) copies should also be sent to Adrian Wright, Cost Analysis Branch, Common Carrier Bureau, Room 812, 2000 L Street, N.W., Washington, D.C. 20554, and one (1) copy should be sent to the Commission's contractor for public service record duplication: International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C., 20037. Copies of the petition may be obtained from the Accounting and Audits Division's public reference room, Room 812, 2000 L Street, N.W., Washington D.C. Copies are also available from ITS at (202) 857-3800.

We will treat this proceeding as non-restricted for the purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§ 1.1200-1.1206. However, if this waiver petition is opposed, it will be treated as a restricted proceeding under the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§ 1.1208-1.1216. For further information contact Adrian Wright at (202) 418-0830.

FEDERAL COMMUNICATIONS COMMISSION

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Release Date: September 22, 1994

PIONEER TELEPHONE COOPERATIVE, INC. AND GTE SOUTHWEST INCORPORATED FILED A JOINT PETITION FOR WAIVER OF THE DEFINITION OF "STUDY AREA" CONTAINED IN PART 36, APPENDIX-GLOSSARY, AND SECTION 61.41(C) OF THE COMMISSION'S RULES
AAD 94-108

Comment Date: October 17, 1994
Reply Date: October 31, 1994

On July 21, 1994, Pioneer Telephone Cooperative, Inc. ("Pioneer") and GTE Southwest Incorporated ("GTE") filed a joint petition for waiver of the definition of "Study Area" as set forth in Appendix-Glossary of Part 36 of the Commission's rules. This waiver would allow the petitioners to reflect the changes in their study area boundaries that would result from GTE's sale of twelve telephone exchanges in Oklahoma to Pioneer. Pioneer also seeks waiver of Section 61.41(c) of the Commission's price cap rules, 47 C.F.R. § 61.41, to exempt it from the price cap "All or Nothing" rule and allow it to continue to operate as a cost company in the National Exchange Carrier Association's common line and traffic sensitive pools. The petitioners state that this transaction is pending before the Oklahoma Public Service Commission.

Interested parties may file comments on GTE and Pioneer's petition on or before **October 17, 1994**, and reply comments on or before **October 31, 1994**, with the Secretary, Federal Communications Commission, 1919 .M Street, N.W., Room 222, Washington, D.C. 20554. Comments and reply comments should reference AAD 94-108. Four (4) copies should also be sent to Adrian Wright, Cost Analysis Branch, Common Carrier Bureau, Room 812, 2000 L Street, N.W., Washington, D.C. 20554, and one (1) copy should be sent to the Commission's contractor for public service record duplication: International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition may be obtained from the Accounting and Audits Division's public reference room, Room 812, 2000 L Street, N.W., Washington, D.C. Copies are also available from ITS at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§ 1.1200-1.1206. However, if this waiver petition is opposed, it will be treated as a restricted proceeding under the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§1.1208-1.1216. For further information contact Adrian Wright at (202) 418-0830.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Release Date: September 22, 1994

BRAZOS TELECOMMUNICATIONS, INC. AND GTE SOUTHWEST INCORPORATED FILED A JOINT PETITION FOR WAIVER OF THE DEFINITION OF "STUDY AREA" CONTAINED IN PART 36, APPENDIX-GLOSSARY, AND SECTION 61.41(C) OF THE COMMISSION'S RULES
AAD 94-112

Comment Date: November 7, 1994
Reply Date: November 21, 1994

On August 8, 1994, Brazos Telecommunications, Inc. ("Brazos"), a wholly-owned subsidiary of Brazos Telephone Cooperative, Inc. ("Brazos Tel") and GTE Southwest Incorporated ("GTE") filed a joint petition for waiver of the definition of "Study Area" as set forth in Appendix-Glossary of Part 36 of the Commission's rules. This waiver would allow the petitioners to reflect the changes in their study area boundaries that would result from GTE's sale of five telephone exchanges in Texas to Brazos. Brazos also seeks waiver of Section 61.41(c) of the Commission's price cap rules, 47 C.F.R. § 61.41, to exempt it from the price cap "All or Nothing" rule and allow it to continue to operate as a cost company in the National Exchange Carrier Association's common line and traffic sensitive pools. The petitioners state that this transaction is pending before the Texas Public Service Commission.

Interested parties may file comments on GTE and Brazos' petition on or before **November 7, 1994**, and reply comments on or before **November 24, 1994**, with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Comments and reply comments should reference AAD 94-112. Four (4) copies should also be sent to Adrian Wright, Cost Analysis Branch, Common Carrier Bureau, Room 812, 2000 L Street, N.W., Washington, D.C. 20554, and one (1) copy should be sent to the Commission's contractor for public service record duplication: International Transcription Service (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of the petition may be obtained from the Accounting and Audits Division's public reference room, Room 812, 2000 L Street, N.W., Washington, D.C. Copies are also available from ITS at (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§ 1.1200-1.1206. However, if this waiver petition is opposed, it will be treated as a restricted proceeding under the Commission's *ex parte* rules. *See generally*, 47 C.F.R. §§1.1208-1.1216. For further information contact Adrian Wright at (202) 418-0830.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-608

In re Applications of

ELINOR LEWIS STEPHENS	File No. BPH-880714ML
AUGUST COMMUNICATIONS GROUP, INC.	File No. BPH-880714MN
GRASS ROOTS RADIO, INC.	File No. BPH-880714NJ

For Construction Permit for
New FM Station, Channel 290C2,
Round Rock, Texas

MEMORANDUM OPINION AND ORDER

Adopted: September 14, 1994; Released: September 23, 1994

By the Review Board: MARINO (Chairman) and GREENE.

1. By *Memorandum Opinion and Order*, FCC 94M-394, released June 8, 1994, Administrative Law Judge Arthur I. Steinberg (ALJ) denied a petition by August Communications Group, Inc. (August) requesting that he issue an Initial Decision that resolves all non-comparative hearing issues in this three-party comparative case. The ALJ denied leave to appeal his ruling pursuant to 47 CFR 1.301(b). *Memorandum Opinion and Order*, FCC 94M-430, released July 1, 1994. On July 20, 1994, August filed with the Board a motion for leave to appeal, which it supplemented on August 8, 1994, and the appeal itself, also supplemented on August 8, 1994. We will deny August's motion to appeal because it has failed to make the requisite stringent showing for consideration of an unauthorized interlocutory appeal, *see, e.g., TMC Long Distance*, 8 FCC Rcd 6661 (Rev. Bd. 1993), and dismiss its appeal as moot.

2. In 1976, after a thorough study of its adjudicatory practices, the Commission concluded that "interlocutory appeals from rulings of the presiding officer ... would be limited to matters appealable as a matter of right under Section 1.301(a)(1)". *Adjudicatory Re-Regulation Proposals*, 58 FCC 2d 865, 873 (1976). Other interlocutory appeals would be entertained only if the presiding officer certified that the "appeal presents a new and novel question of law or policy and that the ruling is such that error would be likely to require remand..." *Id.*, and 47 CFR 1.301(b). As we recently pointed out in *TMC Long Distance, supra*, the Board cannot entertain an unauthorized Section 1.301(b) appeal unless the appealing party has established that "there has been egregious error or flagrant abuse of the presiding judge's discretion," or that "the proceeding involves basic and far reaching consideration of policy and vital concerns relating to the public interest which could not otherwise adequately be protected." *See also Catalina Radio, A California Limited Partnership*, 4 FCC Rcd 8351 (Rev. Bd. 1989).

3. Here, the presiding ALJ denied August's petition for the issuance of an Initial Decision which would resolve outstanding basic qualifications issues against its competing applicants (Elinor Lewis Stephens and Grass Roots Radio, Inc.) because:

> the Commission's *Public Notice*, "FCC Freezes Comparative Proceedings," FCC 94-41, released February 25, 1994, does not contemplate the issuance of partial initial decisions. Specifically, the *Public Notice* directed that initial decisions or supplemental initial decisions be issued only where a case has been remanded for consideration of a basic qualification issue, or where consideration of the applicants' comparative qualifications is unnecessary to resolve the case. Suffice it to say, neither of those factors is present in this case, and the issuance of a partial initial decision is not authorized.

4. August now urges that the Commission's *Freeze Order, supra*, as supplemented by Public Notice, *Modification of FCC Comparative Proceedings Freeze Policy*, FCC 94-204, released August 4, 1994, authorizes the presiding ALJ to issue a partial Initial Decision because the basic qualification issues may result in the disqualification of its opponents and it would then be unnecessary to consider the comparative qualifications of the three applicants for resolution of this case. The Board, however, is not in a position to evaluate whether the basic qualifications issues in this case would be decisional, nor do we have any basis for concluding that the ALJ abused his discretion in following the specific language of the Commission's *Freeze Order, see* ¶ 3, *supra. See Capitol City Broadcasting Co.*, 6 FCC Rcd 5621 (Rev. Bd. 1991). "Absent a strong showing that the ALJ completely ignored, or did not even attempt to conscientiously apply the Commission's recent precedent, we are not empowered to entertain an unauthorized interlocutory appeal," By contrast, in *REM Malloy Broadcasting*, FCC 94R-14, released September 12, 1994, the exceptions and other factual record that were properly within our review function, *see* 47 CFR § 0.365, indicated that resolution of basic qualification issues "may make resolution of the proceeding possible without any comparative consideration."

5. ACCORDINGLY, IT IS ORDERED, That the Motion by August Communications Group, Inc. for Leave to Appeal, filed July 20, 1994, IS DENIED; and, IT IS FURTHER ORDERED, That its appeal filed July 20, 1994, its motion to supplement appeal, and its supplement to appeal, both filed August 8, 1994, ARE DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino,
Chairman, Review Board

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition for Amendment of the Amateur Service Rules to Exempt Senior Citizens from the Telegraphy Speed Requirements in Excess of 5 words per minute.	RM-8485

ORDER

Adopted: September 16, 1994; Released: September 23, 1994

By the Chief, Private Radio Bureau:

1. On May 19, 1994, Mr. Guy A. Matzinger filed a petition (RM-8485) requesting that applicants for the higher classes of amateur operator licenses who are 65 years of age and older be granted an exemption, if requested, from demonstrating telegraphy proficiency at speeds greater than 5 words per minute.[1] The petition seeks to equate senior citizens with persons who are so severely disabled that they are unable to pass a 13 or 20 words per minute telegraphy examination.[2] The petition also states that, although there are exceptions, the average person's faculties are diminished by the aging process.[3]

2. The petition alleges that the amateur service community now supports the change requested. It contains the results of a survey of amateur operators conducted by Mr. Matzinger showing that 63 percent of those surveyed support an exemption while 37 percent are opposed.[4] Although public notice of the filing of the petition was given, no comments were filed. The petitioner correctly notes that similar petitions have been rejected on the basis that the current operator license classes, requirements, and privileges were developed in accordance with the desires of the amateur service community who expressed their views in various rule making proceedings by filing thousands of comments. The Commission considered all of the views expressed in those proceedings and then adopted the rules that are codified in Part 97. *See* 47 C.F.R. §§ 97.1-97.527. The current operator license classes, requirements, and privileges provide motivation for amateur operators to advance their communication and technical skills.

3. In addition to the foregoing, we do not accept the premise of the petition that aging, in itself, is a severe disability. Section 97.505(a)(5), moreover, already provides the accommodation the petitioner requests for persons of all ages who are so severely disabled that they cannot pass a higher speed telegraphy examination.

4. RM-8485 seeks to reverse long-standing Commission policy regarding the requirements that applicants must meet in order to obtain a General, Advanced, or Amateur Extra operator license. It presents neither new facts nor novel arguments that would justify such a policy change at this time. Accordingly, the petition is repetitive and does not warrant action by the full Commission.

5. In view of the foregoing, and pursuant to Section 1.401(e) of the Commission's Rules, 47 C.F.R. § 1.401(e), rule making petition RM-8485, to amend the amateur service rules to exempt persons 65 and older from the higher speed telegraphy requirements, IS DENIED.

6. For further information concerning this Order, contact Maurice J. DePont, Private Radio Bureau, (202) 632-4964.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

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[1] Sections 97.501 and 97.503 of the Commission's Rules, 47 C.F.R. §§ 97.501 and 97.503, establish the telegraphy requirements and standards for the various classes of amateur operator license. The telegraphy speed requirement for the Novice Class operator license is 5 words per minute. It is 13 words per minute for the General and Advanced Class operator licenses, and 20 words per minute for the Amateur Extra Class operator license.

[2] Section 97.505(a)(5) of the Commission Rules, 47 C.F.R. §97.505(a)(5), requires the administering volunteer examiners to give credit for the highest speed telegraphy examination to a person who passes the slowest speed examination (5 words per minute) and obtains a physician's certification stating that because the person is an individual with a severe disability, the person is unable to pass a 13 or 20 words per minute examination.

[3] Petition at 2.

[4] Although the petition provides an age profile of surveyed amateur operators, there is no indication in the petition as to the number of persons surveyed.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Report No. DS-1459 **September 16, 1994**

SATELLITE APPLICATION ACCEPTABLE FOR FILING; CUT-OFF ESTABLISHED FOR ADDITIONAL APPLICATIONS

This Commission has found, upon initial review, that the following application filed by Leo One USA Corporation (Leo One USA) for authority to construct, launch and operate a low earth orbit satellite system is acceptable for filing. The Commission reserves the right to return this application, however, if, upon further review, it is determined that it is defective or not in conformance with the Commission's rules, regulations and policies.

Leo One USA Corporation **File Nos. 57-DSS-P/LA-94(48)**

Leo One USA has filed an application for authority to construct, launch and operate an NVNG mobile satellite system. The Leo One USA system proposes a constellation of 48 low earth orbit satellites circling the globe in four circular orbits with twelve satellites in each orbit, approximately 950 kilometers (513 miles) above the earth. The system proposes to use the VHF band for subscriber links and will be interconnected by means of radio intersatellite links in the Ka-band. The Leo One USA system is intended to provide store-and-forward data services. Leo One USA requests a license to provide service to the United States and its territories and possessions. Additionally, Leo One USA requests authority to provide transmission capacity between the United States and other nations for the provision of NVNG mobile satellite services as foreign administrations authorize the use of the Leo One USA system. Leo One USA proposes to operate its system in the following frequency bands:

Transceiver-Satellite Uplink (TSU)	148.0-150.05 MHz
Gateway-Satellite Uplink (GSU)	148.0-150.05 MHz
Transceiver-Satellite Downlink (TSD)	137-138 MHz
Gateway-Satellite Downlink (GSD)	400.15-401 MHz
Inter-Satellite Link (ISL)	22.55-23.55 GHz
	24.45-24.75 GHz

The Leo One USA transceivers are designed to support a variety of applications, including: status monitoring, vehicle tracking, paging, E-Mail, security monitoring and control and emergency alerting.

Construction is proposed to begin in 1995 with the first satellites being completed and launched in 1997 and the final constellation in operation by 2000. Leo One USA plans to commence service in 1997.

Comments or petitions regarding this application may be filed on or before **November 16, 1994**. Replies and opposition may be filed on or before **December 16, 1994**. Responses may be filed on or before **January 6, 1995**.

Any party wishing its application for use of the above-referenced frequency bands to be processed concurrently with that of Leo One USA must file an application to construct, launch and operate its proposed system, along with appropriate fees, on or before November 16, 1994. Each applicant must file a concrete, comprehensive proposal for its proposed system, describing in detail all pertinent technical and operational aspects of the system and its ability to proceed expeditiously with construction and launch. In particular, applicants shall comply with Part 25 of our rules, including all requirements for NVNG space station applications that are specified in the Report and Order in CC Docket No. 92-76, 8 FCC Rcd 8450 (1993). Applications that fail to comport with these requirements as of the cut-off date will be dismissed as unacceptable for filing.

For further information, contact Kathleen Campbell at (202) 634-1624.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-140

In the Matter of

Revision of Radio
Rules and Policies

ORDER

Adopted: September 15, 1994; Released: September 19, 1994

By the Chief, Mass Media Bureau:

1. In its *Report and Order* in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), the Commission amended 47 C.F.R. § 73.3555. The effective date of the changes adopted in the *Report and Order* was subsequently deferred pending resolution of petitions for reconsideration. *Order Deferring Effective Date* in MM Docket No. 91-140, FCC 92-351 (released July 30, 1992), 57 FR 35763 (Aug. 11, 1992). The stay of the effective date was lifted by *Memorandum Opinion and Order* in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992), 57 FR 42701 (September 16, 1992). Because the stay was lifted in an ordering clause to the document rather than in the Appendix that contained the modified rules, the lifting of the stay was not picked up by the Federal Register. As a result, the rule is currently printed in the Code of Federal Regulations as if the stay was still in effect.

2. This *Order* is intended solely to correct the outdated version of Section 73.3555 currently printed in the Code of Federal Regulations. No substantive changes have been made to the rules; notice and comment are therefore unnecessary. *See* 5 U.S.C. § 553(b)(3). The correct version of Section 73.3555 is printed in its entirety in the Appendix to this *Order*.

3. Accordingly, IT IS ORDERED that 47 C.F.R. Section 73.3555 IS AMENDED as set forth in the Appendix below.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

APPENDIX

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

Part 73 RADIO BROADCAST SERVICES

1. The Authority Citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334.

2. The stay of the effective date of Section 73.3555 was lifted by publication of a *Memorandum Opinion and Order* in MM Docket No. 91-140 in the Federal Register at 57 FR 42701 (September 16, 1992), and Section 73.3555 is revised to read as follows:

§ 73.3555 Multiple ownership.

(a)(1) *Radio contour overlap rule.* No license for an AM or FM broadcasting station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other broadcasting station directly or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests, or in the following circumstances:

(i) In radio markets with 14 or fewer commercial radio stations, a party may own up to 3 commercial radio stations, no more than 2 of which are in the same service (AM or FM), provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market.

(ii) In radio markets with 15 or more commercial radio stations, a party may own up to 2 AM and 2 FM commercial stations, provided, however, that evidence that grant of any application will result in a combined audience share exceeding 25 percent will be considered *prima facie* inconsistent with the public interest.

NOTE: When evaluating audience share evidence submitted under § 73.3555(a)(1)(ii), the Commission will consider data that eliminates statistical anomalies, provides a better focused survey area or includes revenue data or other relevant information. Where applicants certify that they do not have readily available audience share data, they may substitute other information that can serve as a proxy for such data. *See Memorandum Opinion and Order* in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992), 57 FR 42701 (Sept. 16, 1992).

(iii) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(2)(i) Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable ownership interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in

paragraphs (a) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in paragraph (a)(2)(i) of this section shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including specifically control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (a)(1) and (e)(1) of this section.

(iii) Any party operating in conflict with the requirements of paragraph (a)(2)(ii) of this section on September 16, 1992 shall come into compliance within one year thereafter.

(3) For purposes of this paragraph:

(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with § 73.183 or § 73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with § 73.313.

(ii) The number of stations in a radio market is the number of commercial stations whose principal community contours overlap, in whole or in part, with the principal community contours of the stations in question (*i.e.*, the station for which an authorization is sought and any station in the same service that would be commonly owned whose principal community contour overlaps the principal community contour of that station). In addition, if the area of overlap between the stations in question is overlapped by the principal community contour of a commonly owned station or stations in a different service (AM or FM), the number of stations in the market includes stations whose principal community contours overlap the principal community contours of such commonly owned station or stations in a different service.

(iii) A station's "audience share" is the average number of persons age 12 or older on an average quarter hour basis, Monday-Sunday, 6 a.m.-midnight, who listen to the station, expressed as a percentage of the average number of persons listening to AM and FM stations in that radio metro market or a recognized equivalent, in which a majority of the overlap between the stations in question takes place. The "combined audience share is the total audience share of all AM or FM stations that would be under common ownership or control following a proposed acquisition. In situations where no metro market or recognized equivalent exists, the relevant audience share data are the data for all counties that are within the principal community contours of the stations in question, in whole or in part.

(iv) "Time brokerage" is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it.

(b) *Television contour overlap (duopoly) rule.* No license for a TV broadcast station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the Grade B contour of that station (computed in accordance with §73.684) and the Grade B contour of any other TV broadcast station directly or indirectly owned, operated, or controlled by the same party.

(c) *One-to-a-market ownership rule.* No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls one or more such broadcast stations and the grant of such license will result in:

(1) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community of license of an existing or proposed TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the AM station; or

(2) The predicted 1 mV/m contour of an existing or proposed FM station, computed in accordance with §73.313, encompassing the entire community of license of an existing or proposed TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s), computed in accordance with § 73.684, encompassing the entire community of license of the FM station.

(d) *Daily newspaper cross-ownership rule.* No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with §73.183 or §73.186, encompassing the entire community in which such newspaper is published; or

(2) The predicted 1 mV/m contour for an FM station, computed in accordance with §73.313, encompassing the entire community in which such newspaper is published; or

(3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(e)(1) *National multiple ownership rule.* No license for a commercial AM, FM or TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in:

(i) More than 18 AM or more than 18 FM stations, or more than 20 AM or more than 20 FM stations two years after the effective date of this rule, provided, however, that an entity may have an attributable but noncontrolling interest in an additional 3 AM and 3 FM stations that are small business controlled or minority-controlled;

(ii) More than 14 television stations; or

(iii) More than 12 television stations that are not minority-controlled.

(2) No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in, either:

(i) TV stations which have an aggregate national audience reach exceeding thirty (30) percent, or

(ii) TV stations which have an aggregate national audience reach exceeding twenty-five (25) percent and which are not minority-controlled.

(3) For purposes of this paragraph:

(i) "National audience reach" means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

(ii) "TV broadcast station" or "TV station" excludes stations which are primarily satellite operations.

(iii) "Minority-controlled" means more than 50 percent owned by one or more members of a minority group.

(iv) "Minority" means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(v) "Small business" means an individual or business entity which, at the time of application to the Commission had, including all affiliated entities under common control, annual revenues of less than $500,000 and assets of less than $1,000,000.

(f) This section is not applicable to noncommercial educational FM and noncommercial educational TV stations.

Note 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

Note 2: In applying the provisions of this section, ownership and other interests in broadcast licensees, cable television systems and daily newspapers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper will be cognizable;

(b) No minority voting stock interest will be cognizable if there is a single holder of more than 50% of the outstanding voting stock of the corporate broadcast licensee, cable television system or daily newspaper in which the minority interest is held;

(c) Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 10% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(d) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest since X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable.]

(e) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee, cable television system or daily newspaper are subject to said trust.

(f) Holders of non-voting stock shall not be attributed an interest in the issuing entity. Holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (a)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985), as modified on reconsideration in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

(h) Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

(i) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(2) the sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) the sum of the interests computed under paragraph (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

Note 3: In cases where record and beneficial ownership of voting stock is not identical (*e.g.*, bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for the benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of these rules.

Note 4: Paragraphs (a) through (e) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated or controlled broadcast stations in the same service and if no new encompassment of Communities proscribed in paragraphs (c) and (d) of this section as to commonly owned, operated or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience or necessity.) Commonly owned, operated or controlled broadcast stations with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group or entity, except as provided above in this note and by § 73.3555(a). If a commonly owned, operated or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

Note 5: Paragraphs (a) through (e) of this section will not be applied to cases involving television stations that are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the *Report and Order* in MM Docket No. 87-8, FCC 91-182 (released July 8, 1991), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station, the Grade B contour of which overlaps that of a commonly owned, operated, or controlled "non-satellite" parent television broadcast station, or the Grade A contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station, may subsequently become a "non-satellite" station under the circumstances described in the aforementioned *Report and Order* in MM Docket No. 87-8. However, such commonly owned, operated, or controlled "non-satellite" television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section. Nor shall any application for assignment or transfer concerning such "non-satellite" stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in Note 4 of this section.

Note 6: For the purposes of this section a daily newspaper is one which is published four or more days per week, which is in the English language and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

Note 7: The Commission will entertain requests to waive the restrictions of paragraph (c) of this section on a case-by-case basis. The Commission will look favorably upon waiver applications that meet either of the following two standards:

(1) Those involving radio and television station combinations in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination, as determined by counting television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market;

(2) those involving "failed" broadcast stations that have not been operated for a substantial period of time, *e.g.*, four months, or that are involved in bankruptcy proceedings. For the purposes of determining the top 25 ADI television markets, the relevant ADI television market, and the relevant television metropolitan market for each prospective combination, we will use the most recent *Arbitron Ratings Television ADI Market Guide*. We will determine the number of radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records.

Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87-7, FCC 88-407, released February 23, 1989, and *Memorandum Opinion and Order* in MM Docket No. 87-7, FCC 89-256, released August 4, 1989.

Note 8: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application for the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

Note 9: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535-1605 kHz band.

Note 10: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary of the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

Before the
Federal Communications Commission
Washington, D.C. 20554

GN Docket No. 94-90

In the Matter of

Eligibility for the Specialized
Mobile Radio Services
and Radio Services in the
220-222 MHz Land Mobile Band
and Use of Radio Dispatch
Communications

ORDER

Adopted: September 16, 1994; Released: September 16, 1994

By the Chief, Private Radio Bureau:

1. On September 6, 1994, American Mobile Telecommunications Association, Inc. ("AMTA") filed a Motion For Extension Of Time regarding the time for filing Comments and Reply Comments in the above-entitled proceeding. AMTA requests that the Commission extend the deadlines for filing comments and reply comments from September 21, 1994 and October 6, 1994 to October 21, 1994 and November 7, 1994 respectively. RAM Mobile Data USA Limited Partnership ("RMD") has filed an opposition to AMTA's request.

2. AMTA asserts that the rule changes proposed in this proceeding, if adopted, would fundamentally affect the wireless industry and the regulatory environment in which AMTA's members operate. AMTA seeks an extension of time so that it may evaluate these proposals in light of the Commission's recently adopted Third Report and Order in GN-Docket No. 93-252, which establishes new technical, operational, and licensing rules for commercial mobile radio services (CMRS).[1] AMTA observes that the text of the *CMRS Order* has not yet been released and requests that parties have the opportunity to review the text so that they can assess the substantive impact of the *CMRS Order* on the issues raised in this proceeding.[2]

3. RMD opposes AMTA's extension request on the grounds that it could delay disposition of a pending waiver petition submitted by RMD to waive the wireline restriction. RMD also argues that a delay would be inconsistent with the Commission's overall goal of establishing regulatory parity between SMRs and competing CMRS providers.[3]

4. We find that the public interest would be served by granting a short extension so that interested parties have the opportunity to assess the impact of the *CMRS Order* on the issues raised in this proceeding. We agree with RMD, however, that undue delay in this proceeding should be avoided. We therefore conclude that a two-week extension of the comment and reply deadlines is appropriate.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, that the deadline for filing initial comments in this proceeding is extended from September 21, 1994 to October 5, 1994, and that the deadline for filing reply comments is extended from October 6, 1994 to October 20, 1994.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

[1] *Third Report and Order*, GN Docket No. 93-252, FCC 94-212, adopted August 9, 1994, release pending (*CMRS Order*).

[2] AMTA Motion at 4.

[3] RMD Opposition at 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ECONOPHONE, INC. File No. I-T-C-94-353

Application for authority to acquire and operate facilities in the PTAT-1 cable for provision of service between the U.S. and various international points.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: September 13, 1994; Released: September 26, 1994

By the Chief, International Facilities Division:

1. The above-captioned uncontested application, filed by EconoPhone, Inc. requests authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in the Private Transatlantic Telecommunications Cable System (PTAT-1) for the provision of communications services between the U.S. and various international points. The application was placed on public notice on June 22, 1994. No comments were received.

2. EconoPhone is a corporation, organized under the laws of the State of Delaware, which will become a nondominant facilities based carrier upon grant of the instant application. EconoPhone proposes to acquire on an Indefeasible Right of User (IRU) basis, one T-1 circuit in PTAT-1, for the provision of authorized international communications services between the U.S. and various international points.

3. The Commission stated in its Private Submarine Cable Decision[1] that it would require common carriers wishing to acquire capacity in PTAT-1 to file applications pursuant to Section 214 of the Communications Act.[2] In this context, we find that EconoPhone's application contains all of the information necessary under Section 63.01 of the Commission's Rules.[3] Furthermore, we find that EconoPhone's application does not raise any economic impact issues.[4]

4. Upon consideration of the application, we find that authorization of the facilities requested will serve the public convenience and necessity.

5. Accordingly, IT IS ORDERED that application File No. I-T-C-94-353 IS GRANTED, and EconoPhone is authorized to:

a. acquire on an IRU basis and operate one T-1 circuit in the PTAT-1 cable between the U.S. and the U.K. and in the Bermuda spur;

b. lease and operate necessary domestic connecting facilities;

c. lease a one-half interest in and operate necessary overseas connecting facilities; and

d. use said facilities for the provision of EconoPhone's authorized services, including voice and private line services, between the U.S. and the points listed in the Appendix hereto.

6. IT IS FURTHER ORDERED that our authorization of EconoPhone to provide private lines is limited to the provision of such private lines only between the United States and the points listed in the Appendix -- that is, private lines which originate in the United States and terminate in one of the points listed in the Appendix or which originate in one of the points listed in the Appendix and terminate in the United States. In addition, EconoPhone may not -- and EconoPhone's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or the foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the foreign point affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates*, Phase II, First Report and Order, 7 FCC Rcd 559 (1991), *Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, 7 FCC Rcd 7927 (1992), *petitions for reconsideration pending*.

7. IT IS FURTHER ORDERED that neither EconoPhone nor any persons or companies directly or indirectly controlling or controlled by EconoPhone, or under direct or indirect common control with it, shall

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[1] Private Submarine Cable Decision, 100 FCC 2d 1033 (1985).

[2] This requirement was restated in the *International* decision in which the Commission determined that it would require nondominant carriers to file applications to acquire capacity from any future private cable sources. International Competitive Carrier Policies, 102 FCC 2d 812, 845 (1985). Information requirements for Section 214 applications are found in Section 63.01 of the Commission's Rules 47 C.F.R. §63.01.

[3] The Commission places no special burdens on any carrier filing an application to use private cable capacity. *See* Pacific Telecom, Inc., Request for Clarification of Policies Concerning Use of Independent Cables, File No. ISP-89-002, 4 FCC Rcd 4454 (1989) (*Pacific Telecom* decision).

[4] In its *Pacific Telecom* decision, the Commission stated that it has authority under its public interest mandate under Section 214 to consider sua sponte any economic impact issues, including traffic diversion issues, that may be raised in an application by a common carrier to acquire private cable capacity or to consider such issues when raised by third parties filing comments in response to an application. However, the Commission stated that it does not anticipate that common carrier acquisition of private cable capacity will normally give rise to such issues. Even if an applicant seeks to acquire a substantial amount of private cable capacity and to offload capacity on a common carrier cable or change a prior commitment for use of capacity in planned common carrier facilities, the Commission stated that the presence of these factors would not be conclusive evidence of economic harm. The Commission further stated that the "[r]esolution of any economic impact issues that may arise, and a determination of whether grant of the application would serve the public interest, would be dictated by the circumstances of the particular case before us." *Id.* at 4456.

acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which EconoPhone or any persons or companies controlling or controlled by EconoPhone are parties.

8. IT IS FURTHER ORDERED that applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

9. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

10. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

11. IT IS FURTHER ORDERED that this authorization is subject to the terms and conditions of any oreer for the PTAT-1 cable, issued under the act entitiled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§34-39).

12. IT IS FURTHER ORDERED that the applicant shall file an application pursuant to Section 214 of the Communications Act of 1934, as amended, before adding any circuits or channels of communication for the provision of service over the PTAT-1 cable system.

13. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

APPENDIX

Countries to be served via PTAT-1

Afghanistan
Algeria
American Samoa
Angola
Antigua
Aruba
Ascension Island
Australia
Austria
Azores
Bahamas
Bahrain
Barbados
Belize
Benin
Bermuda
Bolivia
Botswana
Brazil
Brunei
Burkina Faso
Burma
Cameroon
Canary Islands
Cape Verde
Cayman Islands
Central African Republic
Chad
Chile
China (Peoples' Republic)
Christmas Island
Colombia
Commonwealth of Independent States (formerly USSR)
Congo
Cook Island
Costa Rica
Curacao
Cyprus
Denmark
Diego Garcia
Dominican Republic
Ebeye
Ecuador
Egypt
El Salvador
Estonia
Ethiopia
Fiji Islands
France
French Guiana
Gabon
Gambia
Germany
Ghana
Gibraltar
Greece
Grenada
Guantanamo Bay (U.S. Naval Base)
Guatemala
Guinea
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Iran
Iraq
Ireland
Israel
Italy
Ivory Coast
Jamaica
Japan
Kenya
Kiribati
Korea
Kosras
Kuwait
Latvia
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Lithuania
Luxembourg
Madagascar
Majuro
Malagasy Republic
Malawi
Malaysia
Mali
Malta
Mariana Islands
Mauritania
Martinique

Monaco
Morocco
Mozambique
Nauru
Netherlands
Netherlands Antilles
New Caledonia
New Guinea
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Palau
Panama
Papua New Guinea
Paraguay
Philippines
Poland
Panapa
Portugaal
Qatar
Romania
St. Lucia
St. Vincent
Saipan
San Marino
Saudi Arabia
Senegal
Sierra Leone
Singapore
Solomon Islands
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syria
Taiwan
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkay
Turks and Caicos Islands
Truk
Uganda
United Arab Emirates
United Kingdom
Uruguay
Vanuatu
Vatican
Venezuela
Western Samoa
Yap
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LCI INTERNATIONAL TELECOM CORP. File No. I-T-C-94-380

Application for authority to acquire and operate facilities for service between the U.S. and various overseas points.

ORDER AND AUTHORIZATION

Adopted: September 13, 1994; Released: September 26, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require a grant thereof.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-380 IS GRANTED and LCI International Telecom Corp. (LCI) is authorized to:

a. acquire on an Indefeasible Right of User (IRU) basis a one-half interest in and operate circuits in the PTAT-1, TPC-4, TAT-9, TAT-10, TAT-11, Haw-5, Pacrim East, SAT-2 and Americas 1 cable systems, as specified in the Appendix hereto;

b. lease and operate 530 64-kbps circuits between LCI's U.S. operating office and the border of Canada, for provision of direct service to Canada, and 80 64-kbps circuits between LCI's U.S. operating office and the border of Mexico for provision of direct service to Mexico;

c. lease and operate any necessary domestic connecting facilities;

d. lease a one-half interest in and operate any necessary overseas connecting facilities; and

e. use said facilities to provide international communications services, including switched and private line services, between the United States, on the one hand, and Canada, Mexico and the points specified in the Appendix hereto, on the other hand.

3. IT IS FURTHER ORDERED that our authorization of LCI to provide private lines as part of its authorized services is limited to the provision of such private lines only between the United States and any one of the points authorized herein -- that is, private lines which originate in the United States and terminate in one of the points authorized or which originate in any of the points authorized and terminate in the United States. In addition, LCI may not -- and LCI's tariff must state that its customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that one of the countries authorized herein affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates, Phase II, First Report and Order*, 7 FCC Rcd 559 (1991), Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending.*

4. IT IS FURTHER ORDERED that neither LCI nor any persons or companies directly or indirectly controlling or controlled by LCI, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which LCI or any persons or companies controlling or controlled by LCI are parties.

5. IT IS FURTHER ORDERED that the applicant shall file copies of any operating agreement it enters into with its foreign correspondent with the Commission within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

6. IT IS FURTHER ORDERED that this authorization is subject to the terms and conditions of any order for the PTAT-1 cable, issued under the act entitiled "An Act relating to the landing and operation of submarine cables in the United States" (47 U.S.C. §§34-39).

7. IT IS FURTHER ORDERED that the applicant shall file an application pursuant to Section 214 of the Communications Act of 1934, as amended, before adding any circuits or channels of communication for the provision of service via the PTAT-1 cable system.

8. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to §203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the service authorized in this Order.

9. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

10. IT IS FURTHER ORDERED that the applicant shall file semi-annual circuit reports pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b) for all common carrier facilities authorized herein.

11. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division

APPENDIX

COUNTRY	FACILITY	NO. OF CIRCUITS (64-(KBPS)
Argentina	Americas 1	7
Australia	Haw-5/PACRIM EAST	25
Austria	PTAT-1	8
Belgium	PTAT-1	12
Brazil	Americas 1	10
Chile	Americas 1	7
China (PRC)	Haw-5/TPC-4	40
Colombia	Americas 1	7
Denmark	TAT-10	8
Egypt	TAT-9	10
Finland	TAT-10	8
France	TAT-11	62
Germany	TAT-10	75
Greece	TAT-9	11
Guam	Haw-5/PACRIM EAST	2
Guyana	Americas 1	13
Hong Kong	Haw-5/TPC-4	160
India	Haw-5/PACRIM EAST/ Sea-Me-We	25
Indonesia	Haw-5/PACRIM EAST	6
Ireland	PTAT-1	8
Israel	TAT-9	25
Italy	TAT-10	38
Japan	TPC-4	80
Korea	TPC-4	15
Malaysia	Haw-5/PACRIM EAST	12
Netherlands	TAT-10 PTAT-1	25 25
New Zealand	Haw-5/PACRIM EAST	5
Norway	PTAT-1	6
Peru	Americas 1	4
Philippines	Haw-5/PACRIM EAST	32

Poland	TAT-10	20
Portugal	TAT-9	12
Russia	TAT-10	20
Singapore	Haw-5/PACRIM EAST	22
South Africa	TAT-9/South Africa cable	20
Spain	TAT-9	9
Sweden	TAT-11	10
Switzerland	TAT-10	25
Taiwan	TPC-4	40
Thailand	TPC-4	6
Venezuela	Americas 1	10
United Kingdom	TAT-11 PTAT-1	105 105

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Sprint Communications Company L.P. — File No. USP-94-W-308

Petition for Waiver of the International Settlements Policy for a Change in the Accounting Rate with El Salvador

MEMORANDUM OPINION AND ORDER

Adopted: September 19, 1994; Released: September 26, 1994

By the Chief, International Facilities Division:

I. INTRODUCTION

1. On August 4, 1994, Sprint Communications Company L.P. (Sprint) filed an amendment to a petition for waiver of the Commission's International Settlements Policy[1] to permit a change in the accounting rate between the United States and its correspondent in El Salvador, Administration Nacional De Telecommunicaciones ("ANTEL").[2] The Common Carrier Bureau sent a letter to Sprint[3] stating that grant of the amendment may not serve the public interest, and that it must await formal staff action before the proposed modification could be implemented.

II. SUMMARY OF REQUEST FOR AMENDMENT

2. On November 2, 1993, Sprint filed a petition for waiver[4] of the ISP seeking approval to reduce the accounting rate with ANTEL from $1.30 per minute to $1.25 per minute, effective December 1, 1993, and to reduce it further to $1.20 per minute, effective July 1, 1994.[5] We allowed this request to go into effect. In its request to amend this petition for waiver, Sprint seeks to withdraw a portion of the waiver calling for a reduction in the accounting rate for IMTS between the United States and El Salvador from $1.25 per minute to $1.20 per minute, scheduled to become effective July 1, 1994. Sprint's request to amend the waiver would result in an increase in the accounting rate that had been previously approved by the Commission for service between the United States and El Salvador. Sprint has failed to demonstrate that the public interest would be served by allowing it to withdraw the portion of the waiver calling for a reduction of the accounting rate to $1.20. Sprint's request, therefore, is denied.

III. DISCUSSION

3. Sprint and its correspondent in El Salvador, ANTEL, negotiated an agreement to reduce the accounting rate for service between the United States and El Salvador from $1.30 in two steps beginning with a five cent per minute reduction in December, 1993 and another five cent per minute reduction in July, 1994. Sprint filed a petition for waiver with the Commission requesting authority to implement the change. We approved this request and allowed the reduction to go into effect on 21 days notice, as required by our Rules. In approving Sprint's petition, we authorized two accounting rates between the United States and El Salvador: $1.25 and $1.20.

4. Sprint received a memorandum from ANTEL, dated June 30, 1994, that suspends the accounting rate of $1.20. On the basis of that memorandum, received one day before the negotiated accounting rate of $1.20 was scheduled to go into effect, Sprint seeks to withdraw that portion of its previously approved petition for waiver to reduce the accounting rate from $1.25 per minute to $1.20 per minute.

5. We believe Sprint's amendment represents an increase in the accounting rate for switched telephone service between the United States and El Salvador. ANTEL and Sprint negotiated an accounting rate of $1.20 per minute, effective on July 1, 1994, and we allowed the agreement to go into effect. It is that accounting rate that is the relevant rate to use in evaluating Sprint's present request. As we have stated, we believe that lower, more economically efficient, cost-based accounting rates serve the public interest. Sprint has not demonstrated that an increase in the accounting rate from $1.20 to $1.25 per minute is justified nor has it indicated that the previously negotiated rate of $1.20 per minute will be implemented at a future date. Further, there is no indication in Sprint's amendment that other accounting rate reductions for service with ANTEL can be expected.

6. In its Phase I Report and Order, the Commission delegated authority to the Bureau "to consider, on a case-by-case basis, granting ISP waiver requests that include a lower, more economically efficient, cost-based, international accounting rate when supported by a sound analysis of the benefits that will result from the implementation of that rate."[6] The Commission stated that the Bureau should

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[1] The ISP requires uniform settlement rates, accounting rates, and division of tolls for U.S. international carriers on parallel routes. *See Implementation and Scope of Uniform Settlements Policy for Parallel International Communications Routes*, 51 Fed. Reg. 4736 (1986) (*ISP Order*); *Reconsideration*, FCC Rcd 1118 (1987); *Further Reconsideration*, 3 FCC Rcd 1614 (1988). In 1991 the Commission reformed the ISP to encourage and facilitate accounting rate reductions by U.S. carriers. *See Regulation of International Accounting Rates*, 6 FCC Rcd 3552 (1991) (*Phase I Report and Order*); *Reconsideration*, 7 FCC Rcd 8049 (1992).

[2] Sprint, Amendment to Waiver, USP-94-W-308, August 4, 1994.

[3] *See* Letter from George S. Li, FCC, to Marybeth Banks, Sprint, dated August 17, 1994.

[4] Sprint, Petition for Waiver, USP-94-W-021, November 2, 1993.

[5] AT&T and MCI filed requests for an identical change in the accounting rate with ANTEL. We allowed these requests to go into effect. See American Telephone and Telegraph Company, Petition for Waiver, USP-93-N-246, June 6, 1993, and MCI, Petition for Waiver, USP-94-W-068, December 22, 1994. Neither carrier has filed an amendment seeking to withdraw the portion of the agreement providing for a reduction in the accounting rate to $1.20.

[6] *Regulation of International Accounting Rates*, 6 FCC Rcd 3552 (1991) at 3554.

approve accounting rate changes if the changes result in either a more cost-based accounting rate, and either a commitment to lower prices or some other public interest benefit.[7] In this context, we must decide under the ISP whether the proposed accounting rate change is in the public interest.

7. The accounting rate between the United States and El Salvador is particularly important because annual net settlement payments from U.S. carriers to ANTEL exceed payments to other countries in Latin America by a large margin. In 1992, for example, net settlement payments to this country were almost $61 million. These payments have grown steadily in recent years. Indeed, net settlement payments to El Salvador account for about 30 percent of all payments to countries in this region.

8. In addition, although ANTEL's accounting rate has been at the low end of the range of accounting rates for service with Latin American countries, it exceeds the benchmark range[8] we believe to be reasonable and conservative for countries outside Europe and Asia. We, therefore, viewed the agreements between ANTEL and U.S. carriers, including Sprint, to reduce the accounting rate as a positive step in bringing about lower, more economically efficient, cost-based accounting rates. The two stage reduction also seems to be generally consistent with the ITU Recommendation that scheduled reductions in accounting rates may be appropriate in some situations.[9]

9. We agree with the ITU Recommendation that a country's level of development may need to be considered when accounting rate reductions are implemented. Graduated reductions that are implemented over a period of time may be an appropriate way to bring about accounting rate progress in particular cases. It may not be possible to achieve cost-based accounting rates in a single step in all cases. We are concerned, however, that in this case, ANTEL negotiated agreements with three U.S. carriers and then it informed at least one U.S. carrier, Sprint, that a portion of the agreement to implement an accounting rate reduction would be suspended. There was no explanation or reason for this action, nor was there any indication that the $1.20 per minute rate, which has been negotiated, would be reinstated at a future date. Moreover, there were no suggestions that other reductions in the accounting rate are being considered.

10. We adopted the provisions of our ISP, in part, to guard against the potential that a foreign correspondent might attempt to take advantage of its position as a monopoly service provider in a country to extract concessions from U.S. carriers. We believe the action by ANTEL in this instance may be viewed as an attempt to get U.S. carriers to withdraw a portion of an agreement to reduce the accounting rate with ANTEL and, in effect, to raise that rate. We are aware that denying Sprint's request may have the unintended effect of discouraging other administrations from entering into agreements that provide for the implementation of a series of small accounting rate reductions over a period of time rather than one large reduction. We believe this risk is small, however, in comparison to the adverse consequences that would result from allowing a foreign correspondent to renege on the terms of an agreement that have been negotiated in good faith. We would expect that the terms of an agreement providing for a phased reduction in the accounting rate would be honored after it has been negotiated and not annulled by one party to the contract just before a reduction in the accounting rate is scheduled to take effect.

11. Finally, in proposing this amendment, Sprint has not demonstrated that the public interest would be served by withdrawing a reduction in the accounting rate with ANTEL that had been previously negotiated by the two parties and, in effect, increasing the accounting rate.

12. Accordingly, IT IS ORDERED that Sprint's amendment to its petition for waiver of the ISP, File No. USP-94-W-308, to withdraw an accounting rate reduction with ANTEL, scheduled to be effective July 1, 1994, is DENIED.

13. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

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[7] *Id.*

[8] We concluded that a reasonable and conservative range for settlement rates for countries outside Europe and Asia is between $0.39 and $0.60 per minute. *See Order on Reconsideration*, 7 FCC Rcd 8049 (1992).

[9] *See* ITU Recommendation D.140.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company — File No. USP-94-W-327

MCI Telecommunications Corp. — File No. USP-94-W-323

Petitions for Waiver of the International Settlements Policy for a Change in the Accounting Rate with the Dominican Republic

ORDER AND AUTHORIZATION

Adopted: September 12, 1994; Released: September 26, 1994

By the Chief, International Facilities Division:

I. INTRODUCTION

1. MCI Telecommunications Corporation (MCI) and American Telephone and Telegraph Company (AT&T) have filed petitions for waiver of the Commission's International Settlements Policy (ISP)[1] to permit a change in the accounting rate for service between the United States and their correspondent in the Dominican Republic, Compania Dominicana de Telephonos C. Por A. ("CODETEL").[2] The Common Carrier Bureau sent a letter to AT&T[3] and letter to MCI[4] stating that grant of the waivers may not serve the public interest, and that the carriers must await formal staff action before the proposed modifications could be implemented.

II. SUMMARY OF WAIVER REQUESTS

2. The petitions for waiver of AT&T[5] and MCI[6] seek to implement a similar growth-based, peak/off-peak IMTS accounting rate agreement with CODETEL for the period April 1, 1994 through December 1, 1994. Both proposals provide for an accounting rate of $1.30 per minute during the full or peak period and an accounting rate $0.60 per minute during the reduced or off-peak period.[7] In the case of AT&T, the peak/off-peak accounting rates would apply to the first 32 million billed minutes of service[8] in a yearly quarter.[9] In the case of MCI, the peak/off-peak accounting rates would apply to the first 11 million billed minutes of service in a yearly quarter. For all minutes that exceed these threshold levels, the accounting rate per minute would be $0.60 per minute. Both proposals provide for a continuation of a $1.00 surcharge for each received collect call, paid to the non-billing administration. Thus, settlement payments to CODETEL are based on the total minutes of service between each U.S. carrier and CODETEL in a quarter, the distribution of those minutes between full and reduced periods, and the minutes that exceed the threshold levels.

3. The waiver requests filed by AT&T and MCI would replace existing, multi-year agreements for accounting rates each has negotiated with CODETEL. These agreements are scheduled to be in effect through at least 1999. AT&T's agreement with CODETEL, which became effective on December 15, 1993, has a current accounting rate of $1.29 per minute and a surcharge of $1.00 per message for each received collect call. MCI's agreement with CODETEL has a current accounting rate of $1.30 per minute during the peak period and $0.60 per minute during the off-peak period, and a surcharge of $1.00 per message for each received collect call. Both agreements provide for the IMTS accounting rate per minute to decline to $1.23 on January 1, 1995, to $1.17 per minute on January 1, 1996, to $1.10 per minute on January 1, 1997, to $1.00 per minute on January 1, 1998, and ultimately to $0.90 per minute on January 1, 1999. The surcharge on received collect calls is also scheduled to fall during this period: to $0.90 per message on January 1, 1995, and then to $0.80 per message on January 1, 1998.

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[1] The ISP requires uniform settlement rates, accounting rates and division of tolls for U.S. international carriers on parallel routes. *See Implementation and Scope of Uniform Settlement Policy for Parallel International Communications Routes*, 51 Fed. Reg. 4736 (1986) (*ISP Order*); *Reconsideration*, 2 FCC Rcd 1118 (1987); *Further Reconsideration*, 3 FCC Rcd 1614 (1988). In 1991, the Commission reformed the ISP to encourage and facilitate accounting rate reductions by U.S. carriers. *See Regulation of International Accounting Rates*, 6 FCC Rcd 3552 (1991) (*Phase I Report and Order*); *Reconsideration*, 7 FCC Rcd 8049 (1992).

[2] American Telephone and Telegraph Company, Petition for Waiver, USP-94-W-327, August 26, 1994; and MCI Telecommunications Corp., Petition for Waiver, USP-94-W-323, August 18, 1994.

[3] *See* Letter from George S. Li, FCC, to Stephen C. Garavito, AT&T, dated August 31, 1994.

[4] *See* Letter from George S. Li, FCC, to Jodi L. Cooper, MCI, dated August 29, 1994.

[5] AT&T's petition for waiver supersedes another petition to change the accounting rate with CODETEL. *See* American Telephone and Telegraph Company, Petition for Waiver, USP-94-W-212, May 12, 1994. AT&T subsequently withdrew that petition.

[6] MCI's petition for waiver supersedes another petition to change the accounting rate with CODETEL. *See* MCI Telecommunications Corporation, Petition for Waiver, USP-94-W-291, July 12, 1994. MCI subsequently withdrew that petition.

[7] The full or peak period is 7 A.M. to 12 A.M., local time, every day of the week; and the reduced or off-peak period is 12 A.M. to 7 A.M., local time, every day of the week.

[8] The waiver AT&T withdrew stated that peak/off-peak rates would apply to an imbalance of minutes rather than the first 32 million minutes of service. We granted this request. *See Order and Authorization* FCC DA 94-810 (C.C.B., International Facilities Division, 1994). Following the release of the Order, AT&T withdrew its petition and refiled it to correct the reference to minute imbalances.

[9] The first quarter covered by the agreements is April 1, 1994 through June 30, 1994; the second quarter is July 1, 1994 through September 30, 1994; and the third quarter is October 1, 1994 through December 31, 1994.

4. We grant the requests of AT&T and MCI to implement the proposed accounting rates for service with CODETEL for the period April 1, 1994 through December 31, 1994, but apply certain conditions to those grants for the reasons stated herein.

III. DISCUSSION

5. In this order, we find that the proposals of AT&T and MCI to reduce the accounting rate from the current levels to $1.30 during the peak period and $0.60 during the off-peak period, and to $0.60 for all minutes that exceed the specified threshold levels represent an appropriate step to bring the accounting rate for service between the United States and CODETEL in the Dominican Republic closer to the benchmark range we established and, ultimately, to a level that reflects the cost of providing service. We are concerned, however, that both proposals seek to replace a multi-year agreement, containing annual reductions in the accounting rate, with an agreement that makes no provisions for accounting rates after December 31, 1994. We approve, therefore, the agreements of AT&T and MCI subject to certain conditions, and require AT&T and MCI to demonstrate that these conditions are satisfied in future petitions that may be filed with us to change the accounting rate with CODETEL.

6. The Commission delegated authority to the Bureau "to consider, on a case-by-case basis, granting ISP waiver requests that include a lower, more economically efficient, cost-based, international accounting rate when supported by a sound analysis of the benefits that will result from the implementation of that rate."[10] The Commission stated that the Bureau should approve accounting rate changes if the changes result in a more cost-based accounting rate, and there is either a commitment to lower calling prices or some other public interest benefit.[11] In this context, we must decide under the ISP whether the accounting rate change proposed by AT&T and MCI is in the public interest.

7. As we noted in a previous order concerning service with the Dominican Republic,[12] the accounting rate for service with this country concerns us because U.S. carriers pay high and growing net settlements to the Dominican Republic. Only three countries received greater payments than the $129.5 million paid to the Dominican Republic in 1992. Many factors contribute to these payments, but we believe the accounting rate is a major reason. Some progress has been realized in reducing the accounting rate with CODETEL but the pace is slow. Indeed, the accounting rate with CODETEL is well above the U.S. world average rate, and higher than the rates with most other Caribbean points. The multi-year agreements recently signed by AT&T and MCI with CODETEL, therefore, seemed to be a major positive step toward reform.

8. The proposals submitted by AT&T and MCI appear to represent yet another positive step in the direction of a lower accounting rate for service with CODETEL. It seems almost certain that an accounting rate structure combining the benefits of peak/off-peak rates with a growth-based scheme will result in a lower average payment per minute for both U.S. carriers in 1994 than it would have been if the current agreement had remained in effect for the entire year. Indeed data suggest that a growing portion of service to the Dominican Republic provided by AT&T and MCI will exceed, on average, their respective threshold levels[13] so each carrier stands to benefit from the lower accounting rate that applies to this service. In addition, many calls undoubtedly take place during the off-peak hours when the accounting rate also would be $0.60 per minute.

9. The accounting rates proposed by AT&T and MCI in their petitions, however, will terminate on December 31, 1994, whereas the agreements with CODETEL that would be superseded by the proposals before us provide for annual reductions in the accounting rate through 1999. The future of the growth-based, peak/off-peak accounting rate after 1994 is uncertain and there are no indications in either petition about the agreements that would be implemented between 1995 and 1999. We believe it is reasonable, however, to conclude that AT&T and MCI expect to be able to negotiate accounting rate arrangements with CODETEL that are more favorable to them than the arrangement that is currently in effect as well as the one under consideration here. Otherwise it seems unlikely that the U.S. carriers would agree to cancel their multi-year agreements, with the provisions for automatic reductions in the accounting rate, and replace them with an agreement that is scheduled to expire at the end this year.

10. We are, of course, aware that market conditions in the communications service industry are evolving in the Dominican Republic and circumstances may be different at the end of the year when the currently proposed agreement is scheduled to expire and new accounting rates are negotiated. If, as a result of these changes, the agreements proposed by AT&T and MCI are extended beyond the expiration date, or CODETEL attempts to propose a higher rate, the carriers could find themselves in the position of having a higher settlement payment per minute in the years 1995 through 1999 than they would have had if the multi-year agreement had remained in effect through 1999. The exact outcome depends upon the portion of each carrier's service that occurs during the off-peak hours as compared to the peak hours, and the portion of their service that exceeds the levels at which the accounting rate falls from $1.30 to $0.60 per minute.

11. To guard against such a possibility, we will evaluate future accounting rate proposals that are submitted by AT&T and MCI by comparing the accounting rate that is being proposed with the lowest of the rates stipulated in the multi-year agreement for the period 1995 through 1999, the accounting rate proposed in the petitions for waiver that are under current consideration, or any future rates that may by proposed to become effective between now and 2000. We expect that any future accounting rate proposals submitted to the Commission by AT&T or MCI for service with CODETEL between now and 2000 will not be higher than either the $1.30$0.60$0.60 accounting rate proposed in the petitions before us, or the rates contained in the multi-year agreement, e.g. $1.23 in 1995, $1.17 in

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[10] *Regulation of International Accounting Rates*, 6 FCC Rcd 3552 (1991) at 3554.

[11] *Id.*

[12] *See Order and Authorization*, DA 94-810, July 20, 1994.

[13] According to the most recent international traffic data report, AT&T had 35.2 million and MCI 11.5 million quarterly billed minutes, on average, to the Dominican Republic in 1993. *See 1992 Section 43.61 International Telecommunications Data*, Common Carrier Bureau, Industry Analysis Division, December 7, 1993.

1996, $1.10 in 1997, $1.00 in 1998, and $0.90 in 1999. Indeed, we anticipate that AT&T and MCI will negotiate accounting rates for the years 1995 through 1999 that are lower than either the rates now being proposed or the rates that would be superseded. We will, therefore, require AT&T and MCI to demonstrate in future petitions for waiver that any rate or rates proposed for service with CODETEL between now and the year 2000 are no higher than the rate in effect at the time a waiver is filed, the rates proposed in the petitions under current review, or the rates in the multi-year agreement, whichever is the lowest rate.

12. Accordingly, IT IS ORDERED that MCI's petition for waiver of the ISP, File No. USP-94-W-323, to implement the accounting rate with CODETEL, effective April 1, 1994, is granted subject to the conditions stated herein.

13. IT IS FURTHER ORDERED that AT&T's petition for waiver of the ISP, File No. USP-94-W-327, to implement the accounting rate with CODETEL, effective April 1, 1994, is granted subject to the conditions stated herein.

14. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the
Application of

FORTUNA SYSTEMS CORP. File No. 925-CM-P-92

For Authority to Construct
and Operate a Multichannel
Multipoint Distribution Service
Station on the E-group Channels
at Salem, Oregon

ORDER ON RECONSIDERATION

Adopted: September 16, 1994; Released: September 26, 1994

By the Chief, Video Services Division:

I. INTRODUCTION

1. Fortuna Systems Corp. filed a petition for reconsideration of the return by the Domestic Facilities Division (Division) on delegated authority of the above-captioned Multichannel Multipoint Distribution Service (MMDS) application for the E-group channels at Salem, Oregon and requested reinstatement of the application.

2. *Background.* In September, 1983, Fortuna filed an application for the E-group channels at Salem and its authorization was granted on November 9, 1988 (File No. 4614-CM-P-83). However, Fortuna's authorization was voluntarily submitted to the Commission for cancellation on April 8, 1991. On January 21, 1992, Fortuna again filed an application for the vacated E-group channels. In addition, Fortuna filed a request for waiver of the location restrictions contained in *Public Notice*, 3 FCC Rcd 2661 (1988).

3. Subsequently, Division staff initiated a review of the application, and Fortuna's application was returned as defective and unacceptable for filing by return notification letter dated October 6, 1993. The letter indicated that Fortuna's application was returned because: (1) Fortuna failed to file an adequate interference analysis, pursuant to Sec. 21.902, and failed to serve required interference studies on all affected parties, pursuant to Sec. 21.902(g); and (2) the area proposed was not open for filing, pursuant to Sec. 21.901(d)(4), as it did not meet the criteria established in *Public Notice*, 3 FCC Rcd 2661 (1988), which specifically states that an applicant may not file in a geographic area of an authorized or pending MMDS application.

4. On reconsideration, Fortuna asserts that its application was not defective and there was no basis for the return of its application. Specifically, Fortuna states that the separation requirements should not be applied in this case. It argues that applications should be accepted for MSA areas, especially in the case where an applicant proposes construction in an area where the conditional license has been forfeited, cancelled, or voided. Here, Fortuna, the previously authorized licensee for the E-group channels at Salem, argues that as its previous conditional license was cancelled, the filing of this new application should be accepted. "Only by the Commission's permitting the filing of new applications in these circumstances would fledgling wireless operators be able to amass the channels needed to make their systems viable."[1] Fortuna filed a request for waiver of the 1988 *Public Notice* based upon this argument, but contends that the Division did not clearly articulate its reasons for denial of the waiver request.

5. In addition, Fortuna maintains that it filed adequate and complete interference analyses which demonstrated that its proposed station would not cause interference to existing MDS operations or previously-proposed applicants. While Fortuna's application was returned based, in part, on the fact that it failed to consider all previously-proposed or authorized ITFS or MMDS stations, pursuant to 21.902(c) and 21.902(i), Fortuna contends that it did indeed consider WMI302, the F-group authorized station, granted February 24, 1992, at Salem and WHT648, the F-group authorized station, granted May 7, 1992, at Portland, Oregon, and that it was not necessary for the applicant to file an interference analysis for any other adjacent-channel or cochannel stations, authorized or previously-proposed. It states that as its proposed station will be colocated with WMI302, both stations will be operated as part of the Salem wireless cable system. "All adjacent channel applications/authorization for Salem will be colocated with the same height, power and polarization. All adjacent channel signals will be of the same intensity, or 0 dB, and there should not be any adjacent channel interference."[2] Similarly, Fortuna states that it considered the F-group channel station, WHT648 at Portland, located within 33 miles of Fortuna's proposed transmitter site, and explained that it would provide 0 dB of adjacent-channel interference protection, pursuant to Section 21.902(b)(4).[3]

II. DISCUSSION

6. *Interference Protection.* While Fortuna did consider the two referenced adjacent-channel stations at Salem and Portland in its analyses, it failed to consider several other previously-proposed stations. Fortuna's proposed transmitter site is within 50 miles of previously-proposed E and F-group channel application transmitter sites at Everett, Washington, the transmitter sites of F-group applicants at Portland, Oregon, and the transmitter site of an F-group applicant at Salem. As an applicant for a new MMDS station, Fortuna is required to demonstrate the potential for interference to any authorized or previously-proposed cochannel and adjacent-channel station(s) within 50 miles of its proposed transmitter site or within the radio horizon, if farther. 47 C.F.R. Secs. 21.902(a), (b) and (c). Further, the level of cochannel and adjacent-channel interference protection established by Sections 0 21.902(b)(3) and

[1] Petition for Reconsideration at 2.
[2] Petition for Reconsideration at 4.
[3] Section 21.902(b)(4) requires that an applicant engineer the station for adjacent-channel operation to insure that the ratio of the signal transmitted to the signal of any authorized, or previously proposed, adjacent-channel station is less than 0 dB.

21.902(b)(4) of the Commission's Rules,[4] must be demonstrated at the time of filing the application, pursuant to Sections 21.902(c)(1) and 21.902(c)(2). *See* Secs. 21.902(d) & (f). However, contrary to the interference protection requirements, Fortuna failed to file and serve all of the required interference analyses relating to previously-proposed applications at Salem, Portland, and Everett.[5] Therefore, Fortuna failed to affirmatively demonstrate that its proposed station would not cause harmful interference to these previously-proposed stations, as required by Section 21.902. Based upon these considerations, we conclude that Fortuna failed to comply with the technical standards regarding interference protection set forth in Sections 21.902(b)(3), 21.902(b)(4), 21.902(c)(1), and 21.902(c)(2).[6] In addition, Fortuna failed to request a waiver of Section 21.902 requirements to file interference analyses. We note that on this basis alone, Fortuna's application is unacceptable for filing.

7. *Location Restrictions.* In accordance with Section 21.901(d)(4) of the Commission's Rules and *Public Notice, Common Carrier Bureau Opens Filing Period For Multichannel Multipoint Distribution Service Applications,* 3 FCC Rcd 2661 (1988), MMDS applications may be submitted for filing only for a location which is farther than fifty (50) miles from any proposed location of an MMDS application pending on April 19, 1988 or an existing authorized MMDS facility. In addition, MMDS applications must specify a transmitter site which is farther than 15 miles from the boundary of a statistical area for which there are MMDS applications pending as of April 19, 1988 or an existing authorized facility. *Public Notice,* 3 FCC Rcd 2661 (1988).

8. Section 21.19 of the Commission's rules provides that waivers may be granted upon application and must contain a statement of reasons sufficient to justify a waiver. A waiver will not be granted except upon an affirmative showing that:

> (a) the underlying purpose of the rule will not be served, or would be frustrated, by its application in this particular case, and the grant of the waiver is otherwise in the public interest; or
>
> (b) the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest.

Applicants must also show the lack of a reasonable alternative. *Wait Radio v. FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969). "An applicant for waiver faces a high hurdle even at the starting gate. When an applicant seeks a waiver..., it must plead with particularity the facts and circumstances which warrant such action." *Id. See Thomas Radio Co. v. FCC,* 716 F.2d 921 (1983).

9. In light of Fortuna's failure to select a transmitter site more than 50 miles from previously-proposed, pending cochannel and adjacent-channel applications, it requests a waiver of the April 20, 1988 *Public Notice* separation requirements. In its waiver, Fortuna asserts that if the *Public Notice* were literally construed it would preclude the filing of new applications in areas where a conditional license has lapsed, "a result at plain odds with the FCC's goal to foster the establishment of the wireless cable industry."[7] Therefore, Fortuna argues that where a conditional license has expired or been tendered for cancellation, as in this case where Fortuna's authorization was cancelled in 1991, it should not be required to choose a transmitter site more than 50 miles from previously-proposed stations. Fortuna repeats these arguments in its reconsideration petition, but adds no further arguments.

10. Fortuna seeks support for its position by arguing that its application for Salem should have been deemed acceptable for filing and, in essence, treated the same as other applications filed in 1983, because the area is open for filing as the result of the cancellation of the authorized station at Salem, which was proposed by an application filed in 1983. However, the circumstances of applications filed in 1983 and the instant case are dissimilar.

11. In the Commission's 1983 decision to reallocate the Instructional Television Fixed Service (ITFS) E and F group channels to MMDS, subject to certain ITFS grandfathered provisions, the Commission concluded that the filing of an interference analysis at the time of filing would not be possible because all MMDS applications would be filed on *one* day. Thus, it was concluded that it would be almost impossible for an MMDS applicant to obtain the locations and station designs of other applicants, prepare the interference analyses, and file these documents on the same day. The Commission, therefore, waived the requirement that applicants, at the time of filing, submit the detailed interference study required by Section 21.902(c). *MMDS Allocation Order,* 94 FCC 2d 1203, 1265 (1983). Instead, all 1983 MMDS applicants, were required to submit, at the time of filing, an interference statement describing the steps and techniques it was willing to utilize for its proposed station to eliminate and avoid harmful interference to other applicants and licensees, pursuant to Section 21.901(d)(7). *See Advancom, Inc.,* (Common Carrier Bur. Dec. 31, 1984); *see also Marilyn Benson,* 6 FCC Rcd 4513 (1992). In the *MMDS Allocation Order,* the Commission stated, "[W]e are hereby waiving the requirement that the first group of applicants for the reallocated channels comply with Section 21.902(c)(1). *If we subsequently decide to accept a second group of applications for these*

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[4] Section 21.902(b)(3) requires that an applicant engineer the system to provide at least 45 dB of cochannel interference protection within the protected service areas of all other authorized or previously-proposed cochannel stations. The 0 dB protection standard for adjacent-channel stations is found at Section 21.902(b)(4).

[5] Specifically, Fortuna failed to consider the previously-proposed F-group application of S.F.O., Inc., located within 23.24 miles of Fortuna's transmitter site, at Salem, Oregon. In addition, Fortuna should have filed interference studies for the forty (40) previously-proposed F-group applicants at Portland, with proposed transmitter sites at various geographic coordinates, all within 50 miles of Fortuna's transmitter site. Further, Fortuna failed to file interference analyses for the twenty-nine (29) previously-proposed E and F-group applicants at Everett, Washington, which were all located within 32.17 miles of Fortuna's transmitter site.

[6] Fortuna also failed to serve these potentially-affected parties with copies of the analyses, as required by Section 21.902(g), and thus deprived previously-proposed applicants of notice and an opportunity to be heard.

[7] Waiver request at 1.

channels such applications must contain the interference analysis required by Section 21.902(c)(1)." *MMDS Allocation Order*, 94 FCC 2d at 1265 (emphasis added).

12. Accordingly, MMDS applications filed *after* 1983 were required to comply with the interference analysis requirements of Section 21.902. Moreover, the *Public Notice* reminded MMDS applicants who filed after April 19, 1988, such as Fortuna, of the duties imposed by Section 21.902. As previously noted, Fortuna failed to comply with the interference protection rules in that it did not consider previously-proposed applicants at Salem and Portland, Oregon, and Everett, Washington.

13. The Fortuna case can also be distinguished from 1983 applicants in that 1983 MMDS applicants were not required to choose a site separated by prescribed distances from other station sites because all MMDS applications were filed on *one* day. Thus, it was not possible for 1983 applicants, unlike Fortuna, to choose a site 50 miles from previously-proposed sites because information on site locations was not available before the end of the one day filing window.

14. Fortuna's application was subject to the separation requirements contained in the *Public Notice* and the Section 21.902 interference requirements. Fortuna however, fails to demonstrate that it should be exempted from the transmitter site selection requirements applicable to thousands of other MMDS applications filed after April 20, 1988. It was not limited to the same geographic coordinates selected by the previous 1983 MMDS applicants, which includes Fortuna's 1983 filing, at Salem. Rather, Fortuna could have selected a transmitter site location consistent with the location restrictions contained in the *Public Notice*, more than 50 miles from previously-proposed sites. Fortuna presents no evidence that there are no transmitter sites more than 50 miles from these previously-proposed sites. Fortuna also makes no connection between the accumulation of channels and the site selection requirement. Channels can be accumulated at a site more than 50 miles from Portland. Further, Fortuna provided no discussion of the effect of a waiver grant upon the previously-filed applicants at Portland, Salem, and Everett. Upon reconsideration, we have considered anew Fortuna's waiver justification. We again find that Fortuna provided insufficient justification for exemption from the requirements applied to thousands of other MMDS applicants.

15. Based on the evidence presented, we find that Fortuna failed to file the required interference analyses for previously-proposed applicants at Salem and Portland, Oregon and Everett, Washington, failed to serve potentially-affected parties, and provides insufficient justification for grant of a waiver of the separation requirements or the interference requirements of Section 21.902. Further, it fails to show that there is a "lack of a reasonable alternative," as required by Section 21.19. Therefore, based on these considerations, the waiver request is denied.

III. CONCLUSION

16. Having carefully considered all of the arguments and evidence presented, we find that it was proper for the Division to return Fortuna's application. Reconsideration and reinstatement of the application is not warranted. Accordingly, IT IS ORDERED that the reconsideration petition filed by Fortuna Systems Corp. IS DENIED. This order is issued pursuant to 47 C.F.R. Sec. 0.283, and is effective on its release date. *See* 47 C.F. R. Sec. 1.4(b), 1.106, and 1.115.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

LAUREL SCHOOL DISTRICT
Delmar, DE — File No. BPLIF-920319DM

SALISBURY STATE UNIVERSITY
Salisbury, MD — File No. BPLIF-930219EH

For Construction Permit and License in the Instructional Television Fixed Service on Channels A1, A2, A3, and A4.

MEMORANDUM OPINION AND ORDER

Adopted: September 7, 1994; Released: September 26, 1994

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Laurel School District (Laurel) and Salisbury State University (Salisbury), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels A1-A4 in the areas of Delmar, Delaware, and Salisbury, Maryland, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a) (1)-(5). Both applicants are qualified to be ITFS licensees. Laurel, a school district, proposes to serve the formal educational needs of students enrolled in schools both within and outside its jurisdiction. Salisbury, a governmental organization engaged in the formal education of students, proposes to serve students on its campus and in neighboring areas. Both applicants are accredited by the Middle States Association of Colleges and Schools.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F Channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Laurel is entitled to four points for being a school district that proposes to serve the formal educational needs of schools within its jurisdiction. Salisbury is also entitled to four points because its proposed facilities will be located in and serve the area in which it is located.

Accreditation. Each applicant is entitled to three points for accreditation. Each is accredited by the Middle States Association of Colleges and Schools.

Four-Channel Limitation. Each applicant is entitled to two points for remaining within the four-channel limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Laurel's illustrative schedule and program grid propose an average of 24.375 hours of formal educational programming per channel per week. Salisbury's illustrative schedule and program grid propose an average of 28.125 hours of formal

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

educational programming per channel per week. Therefore, each applicant is entitled to one programming merit point.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither is entitled to the one point for such applicants.

Total. Laurel and Salisbury are entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points each. Because the applicants are tied, we must utilize our tie-breaker mechanism to determine the winning applicant.

TIE-BREAKER MECHANISM

5. When the comparative procedure results in a tie among two or more applicants, the parties are given 30 days from notification to negotiate an agreement regarding division of the use of channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee is determined through the tie-breaker mechanism detailed in *Instructional Television Fixed Service - Third Report and Order in MM Docket No. 83-523, (Third Report and Order)*, 4 FCC Rcd 4830 (1989); *Third Report and Order Reconsidered*, 5 FCC Rcd 945 (1990); and 47 C.F.R. Section 74.913(d). This mechanism is based upon the submission by each applicant of the number of students at its proposed receive sites who are formally enrolled in classes for credit toward an academic degree or diploma or a legally required certification or license.[3] Each applicant then has 15 days to respond to any aspect of the enrollment submissions. Once this response period has expired, the Commission compares the figures to determine if any applicant's system reaches less than 80 percent as many students as another applicant's. If so, the application resulting in service to the fewer number of students is denied, and the remaining application is granted. If more than one applicant remains, the channels or channel capacity are evenly divided among the remaining applicants. Because the applicants here did not reach an agreement regarding the use of the channels, we look to the enrollment figures submitted by each.

6. Laurel has submitted a letter indicating that 6,403 students will be served at its receive sites, but the necessary receive site letters from schools beyond its jurisdiction were not submitted prior to the "B" cut-off date of June 11, 1993. Consequently, Laurel can be credited only with 515 students, the number enrolled in the schools within its jurisdiction. Salisbury has provided documentation showing that a total of 38,610 students will be served at its receive sites. Because the number of students credited to Laurel, 515, is less than 80 percent of the number of students credited to Salisbury, 38,610, Salisbury will be authorized to operate facilities on Channels A1-A4 and the application of Laurel will be denied.

OTHER MATTERS

7. Salisbury proposes to lease excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. Salisbury has submitted a copy of its lease with Salisbury E MPSG Partnership, which conforms in all respects with our requirements. In addition, no petitions to deny or informal objections have been filed against Salisbury's application.

8. We find Salisbury fully qualified to be an ITFS licensee and conclude that grant of Salisbury's application would serve the public interest, convenience and necessity.

9. Accordingly, IT IS ORDERED, That the application of Laurel School District (BPLIF-920319DM) IS DENIED, and the application of Salisbury State University (BPLIF-930219EH) IS GRANTED.

10. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[3] Only receive sites specified as of the "B" cut-off date may be used in determining the number of students served. *Third Report and Order Recon., supra*. Moreover, applicants serving students other than their own must have submitted letters, also by the "B" cut-off date, from those receive sites indicating an intention to use the proposed service. 47 C.F.R. Section 74.911(c); *Third Report and Order*, 4 FCC Rcd at 4832. Specifically, those letters, to be signed by the administrator or authority responsible for curriculum planning, must indicate that the applicant's programming offerings have been viewed and that such programming will be incorporated in the sites' curricula. Further, the letters should discuss the types and amounts of programming expected to be used and an indication of the extent to which representatives from the various sites will participate in the planning, scheduling, and production of the programming. 47 C.F.R. Section 74.932, Note 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Cincinnati Bell Telephone Company
Revisions to Tariff F.C.C. No. 35

Transmittal No. 658

ORDER

Adopted: September 1, 1994; Released: September 1, 1994

By the Chief, Tariff Division:

1. On July 12, 1994, Cincinnati Bell Telephone Company (Cincinnati) filed Transmittal No. 658 revising its Tariff F.C.C. No. 35, Access Service. By Transmittal 658 Cincinnati introduces a term plan with discounted rates. The transmittal offers customers discounted and stabilized rates for digital data, DS1 and MercNET 45 DS3 services. On July 27, 1994, American Telephone and Telegraph Company (AT&T) filed a petition to reject or, in the alternative, to suspend and investigate Transmittal 658. Cincinnati replied to AT&T's petition on August 5, 1994. Transmittal 658 is scheduled to become effective on September 2, 1994.

2. Cincinnati's rates are regulated pursuant to optional incentive regulation in Section 61.50 of the Commission's rules, 47 C.F.R. § 61.50. The optional incentive plan rules permit participating carriers to introduce new services on 14 days' notice if the new service is "like an existing service offered by a geographically adjacent price cap regulated local exchange carrier." *See* 47 C.F.R. § 61.50(i)(1). These new services are presumed lawful. The carrier also must provide data to show that its rates, in aggregate, are no higher than those in effect for the "same or comparable service" offered by the adjacent price cap carrier. *See* 47 C.F.R. § 61.50(i)(2).

3. Under Cincinnati Bell's transmittal the customer must commit to a minimum level of service for a term of either 36 or 60 months. During the term, a customer's monthly rates are reduced further if the tariffed rates not subject to a discount for the same service decrease. The customer's monthly rate, however, may not increase beyond the original monthly rate in effect at the beginning of the customer's term.

4. The term plan operates as follows: the discount is based on a customer's number of channel terminations. A customer commits to continue taking service for 90 percent of its channel terminations then in service for either a 36 or a 60 month period. So long as the number of the customer's channel terminations stays at this level, the customer will be billed a discounted channel termination rate. The other rate element -- the channel mileage rate -- is the same whether it is taken pursuant to the discount program or pursuant to the tariffed rates not subject to a discount. If a customer's channel terminations increase above the number first committed to the plan, then the customer will be billed the undiscounted monthly rate for all channel terminations that exceed the commitment level. In the event a customer's channel terminations fall below the commitment level, the customer still pays the discounted monthly rate for all channel terminations that it initially committed to the plan.

5. AT&T argues that Cincinnati's filing should be rejected for failure provide cost support information in violation of Section 61.38 of the Commission's Rules. AT&T contends that the optional incentive plan rules require that new services, other than those subject to streamlined review, must be cost supported using prospective data.[1] AT&T also asserts that because the term plan is based on a customer's commitment of a number of channel terminations rather than volume of usage, the program discriminates against customers with large volumes of traffic. AT&T further asserts that the program is inconsistent with cost-based pricing of access services because both large volume users and small volume users receive the same discount.[2]

6. Cincinnati argues that materials filed with its reply comments show that its term plan rates do not exceed those currently offered by Ameritech, a price cap local exchange carrier providing a like service in an adjacent serving area.[3] Thus, Cincinnati contends, the program fully complies with the optional incentive plan rules. Cincinnati also denies that its program discriminates against high volume users. It argues that the optional program merely gives customers another option for receiving a lower rate. Cincinnati further contends that since the term plan does not differentiate among customers based on their size or volume of traffic, it is not discriminatory.

7. We have reviewed Transmittal 658, the petition to reject or suspend and investigate that tariff, the reply by Cincinnati and Cincinnati's supplemental transmittal. We conclude that no compelling argument has been presented that this tariff is patently unlawful so as to warrant rejection, or that an investigation is warranted at this time.

8. Accordingly, IT IS ORDERED that the petition to reject or, in the alternative, to suspend and investigate Cincinnati Bell Telephone Company's Transmittal No. 658, filed by American Telephone and Telegraph Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] AT&T Petition at 3-4.
[2] *Id.* at 4-5.
[3] Cincinnati Reply at 2-3, *citing* Ameritech Transmittal No. 648, filed December 21, 1992.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

SEAFORD SCHOOL DISTRICT
Delmar, DE — File No. BPLIF-920319DN

UNIVERSITY OF MARYLAND EASTERN SHORE
Salisbury, MD — File No. BPLIF-930219EI

For Construction Permit and License
in the Instructional Television
Fixed Service on Channels B1, B2,
B3, and B4.

MEMORANDUM OPINION AND ORDER

Adopted: September 7, 1994; Released: September 27, 1994

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Seaford School District (Seaford) and University of Maryland Eastern Shore (Maryland), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels B1-B4 in the areas of Delmar, Delaware, and Salisbury, Maryland, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a) (1)-(5). Both applicants are qualified to be ITFS licensees. Seaford, a school district, proposes to serve the formal educational needs of students enrolled in schools both within and outside its jurisdiction. Maryland, a governmental organization engaged in the formal education of students, proposes to serve students on its campus and in neighboring areas. Both applicants are accredited by the Middle States Association of Colleges and Schools.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide the service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels within the particular area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F Channel licensees seeking to relocate on another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Seaford is entitled to four points for being a school district that proposes to serve the formal educational needs of schools within its jurisdiction. Maryland is also entitled to four points because its proposed facilities will be located in and serve the area in which it is located.

Accreditation. Each applicant is entitled to three points for accreditation. Each is accredited by the Middle States Association of Colleges and Schools.

Four-Channel Limitation. Each applicant is entitled to two points for remaining within the four-channel limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Seaford's illustrative schedule and program grid propose an average of 24.375 hours of formal educational programming per channel per week. Maryland's illustrative schedule and

[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

program grid propose an average of 27.125 hours of formal educational programming per channel per week. Therefore, each applicant is entitled to one programming merit point.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Consequently, neither is entitled to the one point for such applicants.

Total. Seaford and Maryland are entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational programming per channel per week, for a total of ten points each. Because the applicants are tied, we must utilize our tie-breaker mechanism to determine the winning applicant.

TIE-BREAKER MECHANISM

5. When the comparative procedure results in a tie among two or more applicants, the parties are given 30 days from notification to negotiate an agreement regarding division of the use of channels. If no agreement is reached and advanced to the Commission within that time, the tentative selectee is determined through the tie-breaker mechanism detailed in *Instructional Television Fixed Service - Third Report and Order in MM Docket No. 83-523, (Third Report and Order)*, 4 FCC Rcd 4830 (1989); *Third Report and Order Reconsidered*, 5 FCC Rcd 945 (1990); and 47 C.F.R. Section 74.913(d). This mechanism is based upon the submission by each applicant of the number of students at its proposed receive sites who are formally enrolled in classes for credit toward an academic degree or diploma or a legally required certification or license.[3] Each applicant then has 15 days to respond to any aspect of the enrollment submissions. Once this response period has expired, the Commission compares the figures to determine if any applicant's system reaches less than 80 percent as many students as another applicant's. If so, the application resulting in service to the fewer number of students is denied, and the remaining application is granted. If more than one applicant remains, the channels or channel capacity are evenly divided among the remaining applicants. Because the applicants here did not reach an agreement regarding the use of the channels, we look to the enrollment figures submitted by each.

6. Seaford has submitted a letter indicating that 6,403 students will be served at its receive sites, but the necessary receive site letters from schools beyond its jurisdiction were not submitted prior to the "B" cut-off date of June 11, 1993. Consequently, Seaford can be credited only with 1,717 students, the number enrolled in the schools within its jurisdiction. Maryland has provided documentation showing that a total of 38,610 students will be served at its receive sites. Because the number of students credited to Seaford, 1,717, is less than 80 percent of the number of students credited to Maryland, 38,610, Maryland will be authorized to operate facilities on Channels B1-B4 and the application of Seaford will be denied.

OTHER MATTERS

7. Maryland proposes to lease excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. Maryland has submitted a copy of its lease with Salisbury E MPSG Partnership, which conforms in all respects with our requirements. In addition, no petitions to deny or informal objections have been filed against Maryland application.

8. We find Maryland fully qualified to be an ITFS licensee and conclude that grant of Maryland's application would serve the public interest, convenience and necessity.

9. Accordingly, IT IS ORDERED, That the application of Seaford School District (BPLIF-920319DN) IS DENIED, and the application of University of Maryland Eastern Shore (BPLIF-930219EI) IS GRANTED.

10. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[3] Only receive sites specified as of the "B" cut-off date may be used in determining the number of students served. *Third Report and Order Recon., supra*. Moreover, applicants serving students other than their own must have submitted letters, also by the "B" cut-off date, from those receive sites indicating an intention to use the proposed service. 47 C.F.R. Section 74.911(c); *Third Report and Order*, 4 FCC Rcd at 4832. Specifically, those letters, to be signed by the administrator or authority responsible for curriculum planning, must indicate that the applicant's programming offerings have been viewed and that such programming will be incorporated in the sites' curricula. Further, the letters should discuss the types and amounts of programming expected to be used and an indication of the extent to which representatives from the various sites will participate in the planning, scheduling, and production of the programming. 47 C.F.R. Section 74.932, Note 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-168

In the Matter of

Codification of the Commission's
Political Broadcasting Rules

MEMORANDUM OPINION AND ORDER ON FURTHER RECONSIDERATION

Adopted: September 12, 1994; Released: September 20, 1994

By the Commission:

1. Before the Commission is a petition for reconsideration filed by People for the American Way and Media Access Project ("PFAW/MAP") of the Commission's *Memorandum Opinion and Order* in this docket.[1] PFAW/MAP urges the Commission to amend its rules governing sponsorship identification, 47 C.F.R. §73.1212, to require an audio sponsorship identification for televised political advertisements.

2. In response to public and congressional interest in strengthening political sponsorship identification requirements, our *Notice of Proposed Rulemaking* in this proceeding sought comment on a request by PFAW/MAP that the Commission set minimum size and duration standards for visual sponsorship identifications. We also proposed on our own the possibility of requiring both audio and video identification and asked for comment on that option.[2] In our *Report and Order*, we decided to require that televised political advertisements include both audio and visual sponsorship identifications but declined to adopt any specific quantitative requirements for identification.[3]

3. The Democratic and Republican National Committees filed petitions for reconsideration that raised concerns about the intrusive nature of the audio requirement. In response to the petitions, we reconsidered our new sponsorship identification rules and issued a *Memorandum Opinion and Order* deleting the audio requirement. We concluded that the audio requirement unduly interfered with the content of campaign ads, and thus candidates' ability to convey their political messages, particularly in short 10 to 15 second spots.[4] In order to respond to the need to strengthen the sponsorship identification requirements we instead elected to adopt the specific visual standards originally proposed by PFAW/MAP. Those standards require that the sponsor of a political ad be identified with letters of a minimum height of four percent of the picture frame that are aired for not less than four seconds.

4. PFAW/MAP raises two objections to the *Memorandum Opinion and Order*. PFAW/MAP first argues that the Commission was not justified in adopting the *Memorandum Opinion and Order* having considered only the petitions for reconsideration before it received any reply comments to those petitions.[5] PFAW/MAP next faults the *Memorandum Opinion and Order's* explanation for rescission of the audio requirement and characterizes our action as arbitrary and capricious.

5. The petitioner's objections do not provide a basis for reconsidering the *Memorandum Opinion and Order*. Although we issued the *Memorandum Opinion and Order* without completion of the comment cycle, under the circumstances our decision to modify the customary procedures was reasonable. Because campaigns were underway and numerous primaries were approaching, our action was justified by an urgent need to provide definitive guidance to candidates and stations during the campaign period. Indeed, in its comments in the underlying rulemaking proceeding, PFAW/MAP itself had urged expedited action, emphasizing the critical importance of adopting clear standards for sponsorship identification before the election season began.

6. Moreover, although we did not await the filing of replies to the petitions for reconsideration, our decision was based on the public record compiled during the rulemaking proceeding, in which parties had a full opportunity to address the audio sponsorship identification requirement. In reevaluating our initial decision to adopt the aural sponsorship identification requirement, we particularly noted that, while most of the comments had supported, or had not opposed, the adoption of specific visual standards, there was little support for imposition of the audio requirement.[6] Further, the proposed audio requirement had been strongly opposed by commenters including CBS Inc., the National Association of Broadcasters and the North Carolina Association of Broadcasters. All members of the public, including PFAW/MAP, had an opportunity to respond to those oppositions in the underlying rulemaking proceeding, but none did.[7] In these circumstances, we had ample reason to believe that any commenters with arguments regarding the audio requirement had a fair opportunity to comment. In any event, we have fully considered herein PFAW/MAP's objections to our decision to delete the requirement.

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[1] 7 FCC Rcd 1616 (1992).

[2] 6 FCC Rcd 5707, 5718-21 (1991).

[3] 7 FCC Rcd 678, 687 (1992). Whereas we did not adopt specific visual standards, we reiterated our continuing policy that requires sponsorship identifications to "be displayed in letters of sufficient size to be legible to the average viewer; set against a background that does not reduce the announcement's legibility; and exhibited on the screen for a sufficient time to be read in full by the average viewer." *Id.* at 686.

[4] 7 FCC Rcd at 1616.

[5] PFAW/MAP's petition for reconsideration at 3-5, 9-11.

[6] The Federal Elections Commission had stated only that, in certain limited circumstances (e.g., when the audio portion of a television program is broadcast on radio), a video-only identification would not provide adequate notice of the sponsor.

[7] The proposed audio requirement was not even addressed by PFAW/MAP in its underlying comments. In its petition for reconsideration of the *Report and Order*, PFAW/MAP made a general statement that it "strongly supported" the new aural sponsorship identification requirement. However, its petition primarily was directed to PFAW/MAP's request that the Commission reconsider its decision not to adopt specific minimum size and duration standards for visual sponsorship identifications, a request that we granted.

7. The *Memorandum Opinion and Order* adopted the objective visual standard instead of requiring both audio and visual sponsorship identification in order to strike a balance between furthering a candidate's ability to convey his or her message to the public and the public's right to know the identity of the sponsoring entity. PFAW/MAP, however, believes the requirement of an audio sponsorship identification does not impose an significant burden upon candidates. Further, PFAW/MAP claims that an aural identification adds to the information viewers receive about candidates and that the public interest in having such information overrides any burden that may be imposed on candidates.

8. We conclude that requiring an audio sponsorship identification does impose a significant burden upon candidates. An aural identification may require three to six seconds of broadcast time, which comprises a significant portion of air time. As a consequence, the amount of time remaining for the candidate to convey his or her substantive political message necessarily is shortened, and thus the public interest in promoting an informed electorate is weakened. Further, this significantly burdens the candidate by cutting into the available time for a political message or alternatively requiring the candidate to purchase longer spots, which in turn drives up the candidate's advertising expenditures. In contrast, a visual sponsorship identification can readily be integrated into an advertisement without detracting from the candidate's political message. Thus, we continue to believe a specific visual sponsorship identification is less burdensome and intrusive than the audio requirement.[8]

9. PFAW/MAP claims that requiring an audio identification would not interfere with the content or structure of the remainder of the candidate's message, presumably because, as the audio identification is being broadcast, a political message can still by conveyed visually. In this regard, however, PFAW/MAP does not take into account that the Commission also requires a four second long visual sponsorship identification, thereby impeding the candidate's ability simultaneously to transmit written (visual) political messages.

10. We remain cognizant of, and sensitive to, the needs of the visually-impaired and continue to encourage political advertisers to consider their needs. In this instance, however, we believe that the overall public interest in promoting an informed electorate by ensuring that candidates' political message can be adequately conveyed to the public is of paramount importance.[9]

11. Based on the foregoing, IT IS ORDERED, that the petition for reconsideration filed by PFAW/MAP IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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[8] 7 FCC Rcd at 1618, n.15.

[9] We decline to adopt PFAW/MAP's suggestion that both an audio and a visual sponsorship identification be required for ads that exceed 15 or 20 seconds in length. The vast majority of political advertisements run for short time periods. Given the relatively few ads that would be affected by such a regulation, we believe that imposing the requirement on longer ads would not produce a benefit large enough to justify this additional regulation.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton	CSR-4089-M
Public Television against	IN0057
Sammons Communications, Inc.	

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: August 19, 1994; Released: September 27, 1994

By the Chief, Cable Services Bureau:

1. On October 4, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Sammons Communications ("Sammons"), operator of a cable television system serving Connersville, Indiana,[1] had declined to carry the station, even though WPTD's city of license is within fifty miles of the system's principal headend located in Connersville at N. Latitude 39°37'55" and W. Longitude 85°06'10" and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD also requests that the Commission not only order Sammons to carry its signal, but also order the system to carry on Channel 16, the channel on which it broadcasts over-the-air. An opposition to this petition has been filed on behalf of Sammons to which petitioner has responded.

2. In support of its petition, WPTD states that prior to its formal request for carriage on June 1, 1993, it was informed by the system's previous owner, Cardinal Communications, Inc. ("Cardinal"), of its station's signal strength deficiency at the Connersville headend. At the same time, WPTD indicates that it was also informed of Cardinal's concerns over the possibility of increased copyright costs should WPTD be carried. In its June 1, 1993 letter, WPTD agreed to indemnify Cardinal for any increased copyright costs once specific estimates were supplied and asserted its right to carriage on cable channel 16. Cardinal subsequently presented an estimate of the expected copyright costs,[2] as well as signal quality readings performed on June 15, 1993, which indicated a +5 dbMv (or -44 dBm) signal level for WPTD which meets our standards.[3] Moreover, on the test sheet accompanying the engineering study, Cardinal answered affirmatively to the question as to whether the station met the signal quality standards. Despite this, however, the system requested that WPTD pay the costs of installing the equipment necessary to receive the station at its principal headend.[4] Further, the system sought payment in advance for both the copyright fee and equipment costs as a condition of WPTD's carriage. By letter dated July 16, 1993, WPTD rejected both of these conditions. After the system was sold to Sammons, it also refused to carry the station until such time as it is reimbursed in advance for the costs of additional equipment and copyright liability. To date, WPTD states that it has not been added to the Connersville system.

3. In its response, Sammons states that it has had ongoing discussions regarding the carriage of WPTD, but the station has never been carried on the Connersville system in the past and no equipment is located on the tower which would enable it to receive the signal. Sammons maintains that the *Clarification Order in MM Docket No. 92-259*, 8 FCC Rcd 4142 (1993), requires the broadcaster, and not the system, to bear the cost of any specialized antennas or equipment necessary for the reception of a signal. It argues that in this instance it is only asking WPTD to pay for the cost of the antenna while Sammons states that it will buy other necessary equipment. Finally, Sammons emphasizes that it is not unreasonable to require WPTD to pay the expected copyright costs for its carriage in advance since Sammons will be ultimately responsible for such costs immediately upon adding the station.

4. WPTD states in reply that the *Clarification, supra*, requires a broadcaster to reimburse a system for equipment only in instances where such equipment is necessary to enhance a station's signal quality to enable it to provide a good quality signal. In this case, WPTD avers, test results have shown that it provides a good quality signal to the Connersville headend. Therefore, it insists, it is not required to pay for the cost of an antenna. Finally, WPTD maintains that since its predicted Grade B contour encompasses the entire community of Connersville, the only copyright liability that might incur from its carriage on Sammons' system would be for a community that falls outside the Grade B contour. Nevertheless, WPTD reiterates its willingness to pay any such costs, but insists that the Commission's rulings in the *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993), and *Clarification, supra*, do not require it to pay anticipated costs in advance.

5. We are not persuaded by Sammons' request that WPTD be required to reimburse the system for the cost of an antenna to receive the signals. The *Report and Order, supra*, at paragraph 104 states that ". . . we generally agree . . . that it is the television station's obligation to bear the costs associated with delivering a *good quality signal* to the system's principal headend (emphasis supplied)." Further,

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[1] The Connersville system was operated by Cardinal Communications, Inc. up until July 22, 1993, when it was purchased by Sammons.

[2] On June 10, 1993, Cardinal indicated a copyright fee of approximately $7,383.54 per six months period, but after discussion with WPTD agreed that the amount of $1,110.48 per six months was a more accurate figure.

[3] A standard of -45 dBm was established as a minimum for determining the availability of UHF commercial stations at a cable system's headend. Since these standards address the issue of availability of a station's signal, consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as prima facie tests to initially determine whether a NCE station provides a cable system with a good quality signal.

[4] In a breakdown of the costs associated with the purchase of the equipment necessary to add WPTD to its system (i.e., preamp, dish, etc.), Cardinal indicated that it would cost approximately $1,165.33.

at paragraph 11 of the *Clarification, supra*, we state that "cable operators may not shift the costs of routine reception of broadcast signals to those stations seeking must-carry status." In the instant case, Sammons does not dispute that WPTD provides a good quality signal to its headend. Therefore, WPTD is not obligated to provide the cost of any equipment Sammons feels necessary to receive its signal. In addition, as we stated at paragraph 114 of the *Report and Order, supra*, "We . . . believe that it is reasonable for a cable operator to receive a written commitment from a broadcaster that ensures that the [copyright] payments will be made once the actual amount of copyright liability is determined." WPTD has satisfactorily met this requirement. Further, at footnote 19 of the *Clarification, supra*, it states that ". . . a cable operator may not demand advance payment of estimated copyright fees as a condition for broadcasts to retain must-carry rights." As a result, Sammons cannot deny WPTD carriage on this ground.

6. WPTD's petition establishes that it is entitled to carriage on the Connersville cable system, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Accordingly, the petition filed October 4, 1993, by Greater Dayton Public Television IS GRANTED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Sammons Communications IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Complaint of

DIANNE FEINSTEIN,
JOHN SEYMOUR, THOMAS HAYES,
et. al

Against Station KABC-TV
Los Angeles, California

FURTHER DISCOVERY ORDER

Adopted: September 21, 1994; Released: September 27, 1994

By the Chief, Mass Media Bureau:

I. INTRODUCTION

1. The Mass Media Bureau has before it: (1) a Request for Further Discovery filed on May 18, 1994, by Dianne Feinstein, John Seymour, and Thomas Hayes ("Complainants"); (2) an Opposition filed by ABC Holding Co., Inc., licensee of KABC-TV, Los Angeles, California ("KABC") on June 2, 1994; (3) a Request for Discovery filed June 2, 1994, by KABC; (4) Complainants' Response filed June 6, 1994; and (5) a letter from William R. Richardson, Jr., counsel for KABC, dated May 20, 1994. For the reasons set forth below, we grant in part and deny in part Complainants' Request for Further Discovery, we grant in part and deny in part KABC's Request for Discovery, and we extend certain procedural dates.

II. COMPLAINANTS' REQUEST FOR FURTHER DISCOVERY

2. Complainants seek answers to 29 interrogatories, production of documents in three categories, and an admission. Complainants also wish to take the depositions of five individuals. KABC does not object to interrogatories 2(b), 2(c), 3, 4, 15, 19 through 25, and 27 through 29, or to production of documents related thereto. Accordingly, those interrogatories will be answered and those documents will be produced.

3. Complainants' Interrogatories 1 and 2(a), 2(d) and Document Requests 1 and 2 seek to determine the basis for preemption policies and decisions and any documentation of such policies and decisions. Interrogatory 5 seeks to determine which of certain spots, set forth in exhibits, KABC considers to have been preempted by higher priority spots, and which spots failed to run for other reasons. Interrogatory 6 and the related Document Request 3 asks KABC to list and document any spots not set forth in Complainants' exhibits which KABC considers preempted by higher priority spots. Interrogatory 7 asks for explanations as to why certain lower priced spots ran while higher spots did not run. Complainants state that they need this information to determine which spots were preempted and why, in order to determine the lowest unit charge for what they claim is functionally non-preemptible time.

4. Interrogatory 8 seeks to determine if the rate for a makegood spot sets the lowest unit charge for nonpreemptible commercial spots. Interrogatory 9 seeks information as to the circumstances under which a higher priced spot would be preempted in favor of a lower priced spot, and Interrogatories 10 and 11 seek information about preemption priorities of certain no charge spots. Interrogatory 12 seeks information about certain spots that ran in favor of identically priced spots that failed to run. Interrogatory 13 concerns the impact of the date of placement of an order upon preemption priorities.

5. Interrogatory 14, and the related portion of Document Request 2, seek explanations regarding a statement made by KABC in a Supplement to Application for Review filed April 15, 1994, as well as names and addresses of persons with personal knowledge regarding the statement, and documents in support of the facts therein. The referenced statement is:

> In its Answer, KABC also noted that in two of these four time periods these higher priced commercial advertiser rates included some spots that were purchased as nonpreemptible. Answer at 14; McGuire Affidavit par. 11. A recent review by KABC has determined that these advertisers did not receive a guarantee of nonpreemptibility. Such guarantees were given to political advertisers who purchased nonpreemptible time off the political rate card. In the case of commercial advertisers, those who placed orders for fixed positions (*i.e.*, particular programs, dayparts or breaks) paid high rates for the increased assurance that those commercials would run as ordered. As a practical matter, they were seldom, if ever, preempted where their order had a definite end date and the fixed positions ordered did not permit movement.

6. Interrogatory 16 asks KABC why the candidate-order rate for a certain spot was set at $7,500 in light of the rates paid by other advertisers in that time period. Complainants argue that any genuine risk of preemption could have been avoided at $7,000. Interrogatory 18 asks a follow-up question on the basis of a possible answer to Interrogatory 16. According to Complainants, Interrogatories 8 through 14 and Interrogatory 16 are relevant to determining the lowest unit charge for functionally nonpreemptible spots.

7. Complainants also ask KABC to admit to the following statement:

> For KABC's commercial advertisers in 1990, preemptible spots were not always subject to preemption by higher-priced spots.

Complainants maintain that such an admission would narrow the focus of discovery because it would indicate that the spots are functionally nonpreemptible.

8. In opposition, KABC argues that the foregoing requests are based on the assumption that some preemptible spots were functionally nonpreemptible. KABC states that no basis has been advanced for the assumption and that complainants have not shown a pattern of nonpreemption, citing examples in support of a contrary assumption.

9. KABC shall answer Interrogatory 1, all of Interrogatory 2, Interrogatory 5, Interrogatories 7 through 9, and Interrogatories 12 and 13. Moreover, we will order the

production of documents pursuant to Document Request 1, and those portions of Document Request 2 which relate to Interrogatory 2. The above-cited statement from KABC's Supplement to Application for Review indicates that certain fixed position spots were, as a practical matter, seldom, if ever, preempted. This suggests that some spots may have been functionally nonpreemptible. Thus, discovery designed to elicit this information will be permitted. *See Lawton Chiles, Bob Martinez, and Bill Nelson*, 8 FCC Rcd 714, 715 (MMB 1993).

10. For the same reason, Complainants' request for admission will be allowed. Accordingly, KABC shall respond to the request for admission by either admitting or denying the matters therein. A denial shall fairly meet the substance of the requested admission, and when good faith requires that KABC deny only a part of, or qualify a matter of which admission is sought, KABC shall specify so much of the matter as is true and deny the remainder.

11. KABC need not respond to Interrogatory 6, or the related Document Request 3. As KABC points out, this interrogatory asks KABC to compile a list of spots from documents already produced to Complainants. It is not designed to elicit information not already in Complainants' possession. Interrogatories 10 and 11 ask for the priorities assigned to trade, barter, bonus, package, and other no charge spots, and for related information. Because under policy in effect in 1990 such spots did not, themselves, establish the lowest unit charge, the information sought is not relevant to the issue of overcharges. Moreover, KABC has already been ordered to produce information regarding no charge and bonus spots, and Complainants have not shown the need for additional discovery on this point. *See Lawton Chiles, Bob Martinez, and Bill Nelson*, at 716.

12. As indicated above, we are permitting Complainants to elicit further information regarding preemption practices on the basis, in part, of a statement in KABC's Supplement to Application for Review. Complainants' Interrogatory 14, which asks for further information about the statement itself, is argumentative. Moreover, as pointed out by KABC, the interrogatory asks KABC to analyze information already supplied to Complainants. Finally, Complainants do not show, as required, why the information sought is necessary to resolve the issue of overcharges. *See Order*, 9 FCC Rcd 1586 (MMB 1994). Thus, KABC need not respond to Interrogatory 14, or the related document request.

13. The premise for Interrogatory 16, and its follow-up, Interrogatory 18, is that a genuine risk of preemption could have been avoided at a rate lower than the nonpreemptible rate paid by the candidate. This premise is pure speculation. A violation of lowest unit charge requirements is not suggested by the mere failure of a lower priced preemptible spot to be preempted. Indeed, higher priced nonpreemptible spots are purchased precisely to avoid any risk of preemption at all. In short, Complainants have not shown the need for further discovery in this regard and Interrogatories 16 and 18 need not be answered. The related document request need not be complied with.

14. Interrogatory 17 seeks information regarding alleged rate increases by KABC in 1990. This interrogatory is irrelevant, and need not be answered. Furthermore, KABC need not respond to the related portions of Document Request 2. As KABC correctly indicates, the *Order* dismissed all claims based on rate increases. Complainants' argument that this information would provide insight into the prospective chances of preemption at the time the rates were set is unpersuasive.

15. Similarly, KABC need not respond to Interrogatory 26, which seeks information regarding spots sold to John Van De Kamp. As noted by KABC, Van De Kamp's complaint was dismissed in the *Order*. Complainants' claim that "if one of his nonpreemptible spots was actually preempted, all candidates are affected," is simply unconvincing.

16. Complainants seek to take the depositions of William McGuire, John Riedl, Dennis McCauley, Bruce Roberts, and Steve Cobble. We will not allow the depositions of these individuals. In *Lowest Unit Charge Requirements*, 6 FCC Rcd 7511, 7513 (1991), *recon. denied*, 7 FCC Rcd 4123 (1992) (*"Declaratory Ruling"*) the Commission made clear that it contemplated only "limited discovery subject to specific conditions." In the *Order* we stated, at para. 16, that "any request for depositions must also demonstrate that depositions are necessary to resolution of the issue of overcharges," and, at n.8 , that, as to each deponent, we would require *specific* arguments demonstrating the necessity for the proposed testimony -- both in terms of the information sought and the use of depositions as the means of securing the necessary information. We also indicated that this showing should be supported by documentary evidence. In light of these requirements, we conclude that Complainants have not shown that the depositions are necessary.

17. With respect to the deposition of William McGuire, Complainants' only justification is the fact that McGuire provided an affidavit in KABC's answer which was later clarified. Complainants argue that McGuire should be cross-examined about specific advertisers and spots because it would be "impractical to know or specify such spots at this time." The fact that obtaining the desired information may be impractical at any given time does not mean that the information cannot be obtained without deposing McGuire. Thus, Complainants have not shown the need for the deposition.

18. Complainants state that they wish to examine John Riedl, Dennis McCauley, and Bruce Roberts because these persons have knowledge of KABC's preemption practices. In light of our ruling permitting further discovery, Complainants have failed to establish the necessity for the depositions.

19. Steve Cobble's deposition is sought because he approved the rescheduling of the Van De Kamp spot referenced in Interrogatory 26 and because he was the KABC account executive assigned to handle advertising involving candidates for public office. As indicated above, Van De Kamp's complaint was dismissed in the *Order* and Interrogatory 26 has been disallowed. Thus, this matter is irrelevant. Furthermore, the arguments in support of Cobble's deposition are not specific. They do not set forth the information sought and they do not explain why a deposition is necessary. Thus, we deny the request for Cobble's deposition.

III. KABC'S REQUEST FOR DISCOVERY

20. On June 2, 1994, KABC submitted the following two discovery requests:

> 1. All documents (other than documents identical to those already produced by KABC) relating to any request for time, order, contract, or invoice for advertising on KABC-TV sought or purchased by or on behalf of complainants Feinstein, Seymour, and

Hayes during the 1990 primary election, including any such documents within the custody or control of complainants or their campaign committees, time buyers, attorneys, or other agents or representatives (collectively, "the Representatives").

2. All documents (other than documents identical to those already produced by KABC) within the custody or control of complainants or the Representatives relating to the determination by any of complainants or the Representatives whether to purchase preemptible or nonpreemptible time on KABC-TV during the 1990 primary election.

21. Our *Order*, at para. 16, required KABC to "demonstrate that the information requested is necessary for KABC to respond to arguments or claims that could be made by [Complainants] in their amended complaint." KABC does not make the required showing, merely stating that production of documents similar to those produced by Complainants "will ensure a complete record" on claims anticipated to be raised in the amended complaint. This is not sufficient to demonstrate the specific need for discovery by KABC, and KABC's Request for Discovery would ordinarily be denied.

22. In this case, however, Complainants' response to KABC's request categorizes the request as "very reasonable," while recognizing that the request fails to make the showing required in our *Order*. Complainants state that they:

> will produce such documents [in the custody or control of Complainants' attorneys], provided that they do not constitute attorney-client work product, or other legally privileged documents.

23. With respect to documents in the custody or control of "time buyers" or "other agents," Complainants declare that they:

> are not in a position to produce documents in the custody or control of third parties. Complainants will, however, instruct agents and former agents to cooperate with any requests of non-parties that KABC may wish to make.

We will permit the production of documents to KABC which Complainants have indicated that they are willing to provide.

IV. REQUEST FOR EXTENSIONS OF TIME

24. By letter dated May 20, 1984, counsel for KABC requested a 10-day extension of time to oppose Complainants' request for further discovery and for filing KABC's request for discovery. Complainants consented to this request. In the same letter, KABC and Complainants jointly request that Complainants' time for filing their amended complaint be extended from 30 to 45 days following the final discovery period, and that KABC's period for filing its answer be extended from 15 to 30 days after the filing of the amended complaint. For good cause shown, these requests will be granted.[1]

25. In view of the action taken herein with respect to further discovery, and the modification of other dates in the timetable for discovery and post-discovery, we will, in addition, extend the date for ending discovery on our own motion. An amended timetable for discovery and post-discovery is attached at Appendix A, beginning with the release date of this *Further Discovery Order*.

V. ORDERING CLAUSES

26. In light of the foregoing, Complainants' Request for Further Discovery is GRANTED to the extent indicated herein and DENIED in all other respects. KABC's Request for Discovery is GRANTED to the extent indicated herein and DENIED in all other respects. The timetable for discovery and post-discovery set forth in Appendix C of the *Order* is amended to the extent indicated herein in Appendix A.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

[1] Counsel for KABC and Complainants were notified telephonically that the time for KABC to oppose Complainants' further discovery request and to file a request for discovery would be extended until June 2, 1994.

APPENDIX A

AMENDED TIMETABLE FOR DISCOVERY AND POST-DISCOVERY

Release date of this *Further Discovery Order*:	Day 1
Documents, answers to written interrogatories, and admissions pursuant to this *Further Discovery Order* due:	Day 30
Final day of discovery period:	Day 30
Complainants Feinstein, Seymour, and Hayes' amended complaint due:	Day 75
KABC's answer to amended complaint due:	Day 105
Joint notice of election of complaint resolution procedure due:	Day 116

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

WPRV-TV, Inc., BALCT- 940203KE
Debtor (Chapter 7) BALTT- 940203KF
(Assignor)

and

The Catholic, Apostolic and Roman
Church in Puerto Rico, Archdiocese
of San Juan
(Assignee)

For Assignment of License of Station
WPRV-TV, Channel 13 and TV
Translator Station W56BC, Channel 56,
Fajardo, Puerto Rico

MEMORANDUM OPINION AND ORDER

Adopted: August 29, 1994; Released: September 27, 1994

By the Commission:

1. The Commission has before it for consideration applications to assign the licenses of commercial station WPRV-TV, Channel 13 and TV translator station W56BC, Channel 56, Fajardo, Puerto Rico from WPRV-TV, Inc., Debtor (Chapter 7) to The Catholic, Apostolic and Roman Church in Puerto Rico, Archdiocese of San Juan (Archdiocese of San Juan). The proposed assignee is the licensee of AM radio station WKVM in San Juan, Puerto Rico and FM radio station WORO in Corozal, Puerto Rico. Because WPRV-TV's Grade A contour encompasses the communities of license of WKVM(AM) and WORO(FM) the proposed acquisition of station WPRV-TV would be inconsistent with Section 73.3555(c) of the Commission's Rules (the "one-to-a-market" rule), which prohibits the common ownership of television and radio stations in the same market. However, Archdiocese of San Juan has requested waiver of the rule pursuant to the "failed station" exception set forth in Note 7 of that rule.

2. In 1989, the Commission established standards for reviewing requests for waiver of the "one-to-a-market" rule including adopting a policy under which it would look favorably upon waiver requests involving (1) station combinations in the top 25 markets where 30 or more independent broadcast voices would remain after the proposed transaction; and (2) combinations involving "failed stations." *See Amendment of Section 73.3555*, 4 FCC Rcd 1741, *reconsidered in part*, 4 FCC Rcd 6489 (1989). Broadcast stations that have not been operated for a substantial period of time (four months or more), or that are involved in bankruptcy proceedings are considered "failed" within the meaning of the "failed station" criterion. For the reasons set forth below, we find that the Archdiocese of San Juan has met the necessary standard to receive a waiver under the "failed station" criterion.

3. First, WPRV-TV, Inc. has been involved in bankruptcy proceedings for six years. The station originally filed for protection under 11 U.S.C. Chapter 11 on December 3, 1987 and was converted to the current proceeding under 11 U.S.C. Chapter 7 on June 6, 1989. In addition, our records show that WPRV-TV has been off the air, with Commission approval, since September 22, 1992 due to financial difficulties. For these reasons, we conclude that the applicants have demonstrated that WPRV-TV is a "failed station" as described in Note 7 of Section 73.3555. *See Great Alaska Electric Radio Co., Inc.*, 5 FCC Rcd 2935 (1990); and *KEZB, Inc., Debtor*, 7 FCC Rcd 3209 (1992).

4. In view of the foregoing, and having determined that the applicants are qualified in all other aspects, we find that a grant of the applications, subject to the following conditions, would serve the public interest.

5. Accordingly, IT IS ORDERED, That the applications (BALCT-940203KE and BALTT-940203KF) for consent to assign the licenses of station WPRV-TV and TV translator station W56BC, Fajardo, Puerto Rico from WPRV-TV, Inc., Debtor (Chapter 7) to The Catholic, Apostolic and Roman Church of Puerto Rico, Archdiocese of San Juan, ARE GRANTED, subject to the following conditions:

(a) That the assignment of licenses covered by BALCT-940203KE and BALTT-940203KF be consummated within sixty (60) days of the date of the grant, that the Commission be notified of such consummation within one day thereafter and that the stations resume broadcasting within sixty (60) days after consummation of the grant of applications; and

(b) That ten days prior to the commencement of regular programming operation, the assignee submit certification that equipment performance measurements were made in accordance with Section 73.1590 of the Commission's Rules.

6. It IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this Memorandum Opinion and Order to the applicants by Certified Mail – Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcasting Stations.
(Various Locations)

ERRATUM

Released: September 20, 1994

On July 19, 1994, the Commission released the *Report and Order,* DA 94-710, in the above-captioned proceeding. In the Appendix, the community of Greenville was incorrectly identified as being in "Kentucky" in lieu of "Texas." The Appendix should be corrected as follows:

(1) The following entry should be DELETED:

Community	Channel Deleted	Channel Added
Greenville, Kentucky	228C2	228C3

(2) The following entry should be ADDED:

Community	Channel Deleted	Channel Added
Greenville, Texas	228C2	228C3

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-293

In the Matter of

Amendment of Section 73.202(b), RM-8336
Table of Allotments,
FM Broadcast Stations.
(Harrisburg, Arkansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1994; Released: September 27, 1994

By the Acting Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 8 FCC Rcd 8255 (1993), issued in response to a petition filed on behalf of Harrisburg Broadcasting ("petitioner") proposing the allotment of Channel 240C3 to Harrisburg, Arkansas, as that community's first local aural transmission service. Petitioner filed comments in support of the proposal. No other comments were received.

2. We believe the public interest would be served by allotting Channel 240C3 to Harrisburg since it could provide a first local aural transmission service to the community.

Engineering Analysis

3. As indicated in the *Notice*, Channel 240C3 can be allotted to Harrisburg consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter is located at least 6.8 kilometers (4.2 miles) southeast of the community at coordinates 35-31-23 and 90-39-42. The site restriction is necessary to avoid a short-spacing to the licensed site of Station KSAR(FM), Channel 240A, Salem, Arkansas, at coordinates 36-22-51 and 91-49-28.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 14, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include Harrisburg, Arkansas, as follows:

City	Channel No.
Harrisburg, Arkansas	240C3

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications for Channel 240C3 at Harrisburg, Arkansas, will open on **November 15, 1994**, and close on **December 15, 1994**.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process for Channel 240C3 at Harrisburg should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-312

In the Matter of

Amendment of Section 73.202(b), RM-8394
Table of Allotments,
FM Broadcast Stations.
(Gallup, New Mexico)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1994; Released: September 28, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Lewis J. Wallach ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 72 (1994), proposing the allotment of Channel 268A to Gallup, New Mexico, as the community's fifth local commercial FM transmission service. Petitioner filed comments reiterating his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 268A to Gallup since an interest has been expressed in providing the community with an additional local transmission service. Channel 268A can be allotted to Gallup in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 14, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Gallup, New Mexico	229C, 233C, 256C1, 268A, 291C2

4. The window period for filing applications will open on **November 15, 1994**, and close on **December 15, 1994**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 268A at Gallup are 35-31-30 North Latitude and 108-44-30 West Longitude.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

JOHNSON-BROCK PUBLIC SCHOOLS
Peru, Nebraska — FILE NO. BPLIF-920501DF

SOUTHERN PUBLIC SCHOOL DISTRICT #1
Tecumseh, Nebraska — FILE NO. BPLIF-930415DF

For Construction Permit and License
in the Instructional Television
Fixed Service on Channels C1-C4

MEMORANDUM OPINION AND ORDER

Adopted: September 7, 1994; Released: September 28, 1994

By the Commission:

1. The Commission has before it for consideration the above-captioned mutually exclusive applications of Johnson-Brock Public Schools (Johnson) and Southern Public School District #1 (Southern), each seeking a construction permit and license in the Instructional Television Fixed Service (ITFS) on Channels C1-C4 in the areas of Peru and Tecumseh, Nebraska, respectively.

BASIC ELIGIBILITY

2. Before applying the mutually exclusive selection procedure to determine the number of merit points to be awarded to each applicant, we must first ascertain the basic eligibility of the applicants. Educational institutions and governmental organizations that propose to serve either their own enrolled students or students at accredited schools within their respective jurisdictions establish their eligibility by accreditation from the appropriate state department of education or a recognized regional or national accrediting organization. Other ITFS applicants that propose to serve students at accredited schools outside of their respective jurisdictions must, to be eligible, submit letters of intended use from those schools and establish local program committees in those communities. See 47 C.F.R. Section 74.932(a)(1)-(5). Both applicants are qualified to be ITFS licensees. Johnson and Southern are school systems that propose to provide formal educational programming to schools within and outside of their respective jurisdictions. Both applicants are accredited by the Nebraska Department of Education.

MUTUALLY EXCLUSIVE SELECTION PROCEDURE

3. In cases of mutually exclusive applications, where applicants are competing for the same or adjacent channels in the same geographic area, each application is reviewed pursuant to our comparative process. This procedure awards a maximum of twelve merit points based on five criteria deemed to be most relevant to predicting the applicant best qualified to provide service for which the ITFS spectrum has been allocated. *Instructional Television Fixed Service - Second Report and Order in MM Docket No. 83-523, (Second Report and Order)*, 101 FCC 2d 49, 65-72 (1985); 47 C.F.R. Section 74.913. First, four points are awarded to local applicants.[1] Second, three points are awarded to applicants which are accredited schools, educational institutions, or school boards and school districts applying within their jurisdictions. Third, two points are awarded to applicants whose requests would result in the acquisition by these applicants of four or fewer ITFS channels in the same area. Fourth, either one or two points may be awarded to applicants for specified levels of proposed ITFS programming.[2] Fifth, one point is awarded to applicants which are existing E or F channel licensees seeking to relocate to another ITFS channel group, where such applicants show an established need for an expanded service that cannot be accommodated on their grandfathered E or F facilities. The tentative selectee is the applicant with the highest score.

4. Under this comparative selection process, the applicants are awarded points based on the following criteria:

Localism. Each applicant is entitled to four points for being local. Johnson and Southern are school systems serving the formal educational needs of schools within their jurisdictions.

Accreditation. Each applicant, accredited by the Nebraska Department of Education, is entitled to three points under this comparative criterion.

Four-Channel Limitation. Neither applicant is the licensee of, or has filed applications for, additional ITFS channels in its proposed service area. Therefore, each applicant is entitled to two points for remaining within the four-channel limitation.

Instructional Programming. ITFS applicants detail their formal educational and other ITFS programming proposals in both a program schedule and a program "grid." Johnson's illustrative schedule and its programming grid propose an average of 24.375 hours of formal educational ITFS programming per channel per week. Consequently, Johnson is entitled to one programming merit point. In contrast, Southern's illustrative schedule and its programming grid propose 20 hours of ITFS programming, all of which is intended to be formal educational programming.

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[1] A "local" applicant is an institution or organization that is physically located in the community or metropolitan area where service is proposed. *Second Report and Order*, 101 FCC 2d at 59; 47 C.F.R. Section 74.932, Note 1.

[2] One point is awarded for a proposed weekly schedule of at least 21 average hours per channel of formal educational programming or of at least 41 average hours per channel of other ITFS programming. Two points are awarded for a proposed weekly schedule of at least 41 average hours per channel of formal educational programming or at least 61 hours per channel of ITFS programming where at least 21 of those hours are formal educational programming. 47 C.F.R. Section 74.913(b)(4).

Because the amount of programming proposed does not reach the threshold amount at which merit points are awarded, Southern is entitled to no programming merit points.

E- and F- Channel Group Relocation. Neither applicant is the current licensee of an E or F channel seeking to relocate to other channels. Therefore, neither is entitled to the one point for such applicants.

Total. Johnson is entitled to four points for being local, three points for being accredited, two points for observing the four-channel limitation, and one point for proposing at least 21 hours of formal educational ITFS programming per channel per week, for a total of ten points. Southern is entitled to four points for being local, three points for being accredited and two points for observing the four-channel limitation, for a total of nine points. Thus, the tentative selectee is Johnson.

OTHER MATTERS

5. Johnson proposes to lease its excess capacity for non-ITFS use, as permitted by 47 C.F.R. Section 74.931. The applicant has submitted a copy of its lease with RuralVision Central, Inc., which conforms in all respects with our requirements. In addition, no petitions to deny or informal objections have been filed against Johnson's application.

6. We find Johnson fully qualified to be an ITFS licensee and conclude that grant of Johnson's application would serve the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED, That the application of Southern Public School District #1 (BPLIF-930415DF) IS DENIED, and the application of Johnson-Brock Public Schools (BPLIF-920501DF) IS GRANTED.

8. IT IS FURTHER ORDERED, That the staff of the Mass Media Bureau shall send copies of this decision to the applicants by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In The Matter of the
Revocation of license of

JAMES B. WILLIAMS
Wilmington, California
Amateur Radio Station AA6TC

and

Suspension of license of

JAMES B. WILLIAMS
Wilmington, California
Amateur Extra Class
Radio Operator License

and

Revocation of license of

ROSE MARIE FLORES
Santa Monica, California
Amateur Radio Station N6WPR

and

Suspension of license of

ROSE MARIE FLORES
Santa Monica, California
Amateur Extra Class
Radio Operator License

and

Revocation of license of

ROBERT L. FLORES
Santa Monica, California
Amateur Radio Station N6WPQ

and

Suspension of license of

ROBERT L. FLORES
Santa Monica, California
Amateur Extra Class
Radio Operator License

ORDER TO SHOW CAUSE AND SUSPENSION ORDER

Adopted: September 20, 1994; Released: September 27, 1994

1. The Commission has before it for consideration the amateur radio station licenses and Amateur Extra Class operator licenses held by James B. Williams (AA6TC), Rose Marie Flores (N6WPR), and Robert L. Flores (N6WPQ).

2. It appears that the respondents -- James B. Williams, Rose Marie Flores, and Robert L. Flores -- and a fourth person were volunteer examiners (VEs) at an amateur operator license examination session held at the Carol Little company (Company) in Los Angeles, California, on August 15, 1993. It is undisputed that they administered examinations at that session to seven members of a class that had been held for Company employees. The respondent VEs claim that they also examined numerous additional persons at the same session. Information available to the Commission, however, indicates that the respondents did not examine additional persons.

3. It appears further that the respondents willfully signed VE certifications and Certificates of Successful Completion of Examination indicating that persons who were not examined at the Company session had passed the examination elements required for amateur operator licenses at that session. It also appears that respondent Rose Marie Flores, who was in charge of the paperwork at the Company session, willfully obtained the signatures of other VEs upon certifications and Certificates of Successful Completion of Examination indicating that persons who were not examined at that session had passed the examination elements required for amateur operator licenses. It appears, therefore, that the respondents assisted other persons to obtain amateur operator licenses by fraudulent means, in willful and repeated violation of Sections 97.17(e) and 97.517 of the Commission's Rules, 47 C.F.R. §§ 97.17(e) and 97.517;[1] and that the respondents made misrepresentations of material fact to the Commission.

4. It appears further that the respondents claimed, in their replies of June 5 (Williams), June 25 (Robert L. Flores -- date of postmark) and July 14 (Rose Marie Flores) to Commission correspondence, that there was a second examination sitting on August 15, 1993, on the premisses of the Company. Information available to the Commission, however, indicates that there was no "second sitting." It appears, therefore, that the respondents' claims are misrepresentations of material fact to the Commission.

[1] Section 97.17(e) provides: "No person shall obtain or attempt to obtain or assist another person to obtain or attempt to obtain an amateur operator license or reciprocal permit for alien amateur operator license by fraudulent means." Section 97.517 provides: "No VE may administer or certify any examination by fraudulent means or for monetary or other consideration including reimbursement in any amount in excess of that permitted. Violation of this provision may result in revocation of the VE's amateur station license and the suspension of the VE's amateur operator license."

5. IT IS ORDERED that, under Sections 312(a)(2) and (4) and 312(c) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. §§ 312 (a)(2) and (4) and 312(c), the respondents ARE DIRECTED TO SHOW CAUSE why the captioned radio station licenses should not be REVOKED; that the respondents' captioned operator licenses ARE SUSPENDED, under Sections 303(m)(1)(A) and (F) of the Act, 47 U.S.C. § 303(m)(1)(A) and (F), for the remainder of their terms; and that the issues thereupon will be the following:

(a) To determine whether the respondents willfully and/or repeatedly violated Sections 97.17(e) and 97.517 of the Commission's Rules, 47 C.F.R. §§97.17(e) and 97.517.

(b) To determine whether the respondents misrepresented material facts to the Commission.

(c) To determine whether the respondents are qualified to remain Commission licensees.

(d) To determine whether the Commission would be warranted in refusing to grant an amateur service license to each respondent on the basis of an original application.

(e) To determine whether each of the captioned radio station licenses should be revoked.

(f) To determine whether the suspension of each of the captioned operator licenses should be affirmed, modified or dismissed.

6. IT IS FURTHER ORDERED that, to avail him or herself of the right, under Section 1.91(c) of the Commission's Rules, 47 C.F.R. § 1.91(c), to present evidence at a hearing, each respondent desiring a hearing shall file a request for a hearing within 30 days after receiving this order. If a hearing is requested, a time, place and presiding Administrative Law Judge will be designated by subsequent order. If any or all respondents do not request a hearing, the Commission will consider a written statement from each respondent not requesting a hearing and will determine, without a hearing, whether revocation and/or suspension is warranted.

7. IT IS FURTHER ORDERED that the operator license suspension of any respondent who files a timely request for a hearing or a written statement will be held in abeyance pending a decision and that the operator license suspension of any respondent who does *not* file a timely request for a hearing or a written statement will take effect 30 days after his or her receipt of this order.

8. IT IS FURTHER ORDERED that the captioned proceedings are CONSOLIDATED pursuant to Section 1.227 of the Commission's Rules, 47 C.F.R. § 1.227. The captioned proceedings involve substantially the same issues and their consolidation will best conduce to the proper dispatch of business and to the ends of justice.

9. IT IS FURTHER ORDERED that, under Section 312(d) of the Act, 47 USC § 312(d), both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Private Radio Bureau as to all issues.

10. IT IS FURTHER ORDERED that copies of this Order shall be sent to each respondent by Certified Mail -- Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. McNamara
Chief, Special Services Division

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ALLNET COMMUNICATION
SERVICES, INC.,
Complainant,

v.

BELLSOUTH
TELEPHONE COMPANIES,
Defendants.

File No. E-93-024

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Enforcement Division
Common Carrier Bureau

ORDER

Adopted: September 21, 1994; Released: September 28, 1994

By the Chief, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On May 2, 1994, Allnet Communication Services, Inc. (Allnet) filed a petition for reconsideration in the above referenced proceeding seeking reconsideration of the Commission's decision[1] to deny Allnet's complaint with regard to its 1+ interstate, intraLATA access claims. On September 14, 1994, however, Allnet filed a motion to dismiss the petition for reconsideration with prejudice stating that a mutually agreeable settlement of all pending controversies has been reached.

2. We are satisfied that granting Allnet's motion to dismiss the petition for reconsideration will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of the Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Allnet's Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the petition for reconsideration in the above-captioned proceeding IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

[1] *ACC Long Distance Corporation v. New York Telephone Company*, 9 FCC Rcd 1659 (1994).

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-6

In the Matter of

Amendment of Section 73.202(b), RM-8410
Table of Allotments,
FM Broadcast Stations.
(The Dalles, Oregon)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 21, 1994; Released: September 28, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Larson-Wynn, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 671 (1994), proposing the allotment of Channel 224C3 to The Dalles, Oregon, as the community's third local FM transmission service. Petitioner filed comments reiterating its intention to apply for the channel, if allotted.[1] No other comments were received.

2. We believe the public interest would be served by allotting Channel 224C3 to The Dalles since an interest has been expressed in providing the community with an additional local radio service. Channel 224C3 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **November 14, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
The Dalles, Oregon	224C3, 249C2, 283C

4. The window period for filing applications will open on **November 15, 1994**, and close on **December 15, 1994**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] In the *Notice* it was stated that the petitioner had failed to comply with Section 1.52 of the Commission's rules because no affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge was included. Petitioner has corrected this omission in its comments.

[2] The coordinates for Channel 224C3 at The Dalles are 45-35-42 North Latitude and 121-10-24 West Longitude.

Before the
Federal Communications Commission
Washington, D.C. 20554

PP Docket No. 93-253

In the Matter of

Implementation of Section 309(j)
of the Communications Act -
Competitive Bidding

ORDER ON RECONSIDERATION

Adopted: September 22, 1994; Released: September 22, 1994

By the Commission: Commissioner Barrett not participating.

1. In this Order, we reconsider on our own motion various decisions made with regard to designated entities in the *Third Memorandum Opinion and Order* in this docket.[1] In addition, we take this opportunity to clarify other rules adopted in that Order.

I. INSTALLMENT PAYMENTS FOR WOMEN AND MINORITY-OWNED BUSINESSES

2. In the *Third Memorandum Opinion and Order*, we adopted certain provisions to ensure the opportunity for businesses owned by women and minorities and small businesses to participate in the regional narrowband PCS auction to be held October 26, 1994. Specifically, we adopted a 40 percent bidding credit for women and minority-owned firms and installment payments for small businesses. Small businesses are defined as businesses with less than $40 million in annual gross revenues. On further reflection, we believe that to ensure that designated entities have the opportunity to participate in narrowband PCS, minority and women-owned companies, as opposed to just small businesses, should be allowed to pay their winning bids in installments.

3. As we noted in the *Third Memorandum Opinion and Order*, the original provisions adopted for designated entities in the narrowband PCS service were based on assumed relatively low capital entry costs. The experience in the nationwide narrowband PCS auction in July led us to adjust the designated entity provisions for the regional auction to take into account the much higher than expected prices paid for narrowband licenses. Specifically, we raised the bidding credit from 25 percent to 40 percent for women and minority-owned businesses and we raised the financial thresholds for businesses wishing to qualify as small businesses. We remain concerned, however, that, given these high costs, businesses owned by women and minorities will be unable to participate successfully in the upcoming regional auction without installment payments.

4. In the *Fifth Report and Order* in this proceeding, we documented the serious funding problems faced by women and minorities. Indeed, we noted that Congress had recognized that these problems were even more severe for minority and women-owned businesses than for small businesses.[2] We also referred to a number of studies that supported the congressional findings regarding the difficulties minorities and women have accessing capital.[3]

5. In its petition for reconsideration in this proceeding, Cook Inlet Region, Inc. asked us to reconsider the scope of the installment payment option for designated entities. It contended that failure to extend the availability of installment payments to all women and minority-owned companies, instead of just small businesses, will exclude a substantial number of designated entities from meaningful participation in spectrum-based services. Cook Inlet argued that this result is contrary to the intent of Congress.[4] In response to this, we stated with respect to our generic auction rules that, while installment payments would not generally be available to all designated entities irrespective of their economic status, we retained the flexibility to expand or modify the installment payment option on a service-specific basis where the spectrum costs, capital infrastructure requirements and other economic barriers necessitate their application to other entities.[5] "[T]his additional flexibility will allow us to take account of differences in capital requirements across services and license blocks, and to provide access to capital in ways that will give various groups of designated entities a realistic chance to participate in offering service."[6]

6. In addition, in a recent *ex parte* filing, Essence Communications, Inc. further elaborates on the various broad congressional initiatives that have been aimed at helping minorities overcome obstacles to financing.[7] For example, Essence notes that the Equal Credit Opportunity Act (ECOA) Amendments[8] impose a federal ban on race-based denials of extension of credit. The legislative history to the ECOA Amendments highlights the challenges faced by entrepreneurs seeking credit to fund their businesses.[9] In addition, Essence states that Congress recently amended the Community Reinvestment Act (CRA)[10] to bolster the evaluations of financial institutions that subsidize minority

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[1] *See Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in PP Docket No. 93-253, FCC 94-219 (released August 17, 1994), 59 Fed. Reg. 44,058 (August 26, 1994) (*"Third Memorandum Opinion and Order"*) .

[2] *Fifth Report and Order* in PP Docket No. 93-253, FCC 94-178 at ¶ 98 (released July 15, 1994).

[3] *Id.* at ¶ ¶ 98-103. We incorporate by reference here the discussion of these issues in the *Fifth Report and Order*.

[4] Petition for Reconsideration of Cook Inlet Region, Inc., PP Docket No. 93-253, May 20, 1994, at 3-6. *See also*, Petition for Reconsideration of the Association of Independent Designated Entities, PP Docket No. 93-253, June 3, 1994.

[5] *See Second Memorandum Opinion and Order* in PP Docket No. 93-253, FCC 94-215 at ¶ ¶ 114, 128 (released August 15, 1994).

[6] *Id.* at ¶ 128.

[7] Comments and Recommendations of Essence Communications, Inc. in Response to the Commission's Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, September 14, 1994, at 8-10.

[8] Pub. L. No. 94-239, 90 Stat. 251 (1976).

[9] S. Rep. No. 589, 94th Cong., 2d Sess. 3 (1976), *reprinted in* 1976 U.S.C.C.A.N. 403, 405.

[10] Pub. L. No. 95-128, 91 Stat. 1147 (1977).

banks in predominantly minority areas.[11] According to Essence, this aspect of the CRA is entirely race-conscious and contains no financial thresholds.

7. Essence further asserts that both these congressional measures and the steps taken by the Commission to improve minority access to capital have had limited success in reducing the barriers to entry for minority entrepreneurs. Therefore, Essence emphasizes that the Commission must do more to ensure the opportunity for minority participation in narrowband PCS. It states that the Commission's conclusion that bidding credits are the most cost effective and efficient means of achieving this congressional objective was mistaken and that the July 1994 narrowband auction proved that "bidding credits do not and cannot sufficiently address financing obstacles nor provide a competitive advantage with regard to the national licenses."[12] Accordingly, Essence argues that the Commission should either adopt an "entrepreneur block" scheme for the upcoming regional narrowband PCS auction or raise the small business financial threshold for minority-owned companies.

8. Based on this additional information, our experience from the recent nationwide narrowband auctions and upon further reflection, we agree that the funding problems faced by minority and women-owned companies, combined with the potentially high cost of purchasing a narrowband PCS license at auction, erect a significant hurdle for these entrepreneurs. Because of these difficulties, we already have adopted a 40 percent bidding credit for businesses owned by women and minorities,[13] regardless of size, on two of the six regional narrowband PCS licenses.[14] We think that allowing these applicants owned by women and minorities to pay for their licenses over time will go a long way toward overcoming this barrier to entry. It will also provide more meaningful opportunities for designated entities bidding in the upcoming regional auctions. Accordingly, we adopt an installment payment plan for women and/or minority-owned businesses that obtain a regional narrowband PCS license on Channel 13 and Channel 17. Similar to the installment payments for larger entities in the entrepreneurs' blocks for broadband PCS auctions, this plan provides for interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. treasury obligations, plus 2.5 percent.[15] Payments of interest only will be due for the first two years, with principal and interest payments amortized over the remaining years of the license. In addition, as we did for small businesses, we will permit businesses owned by minorities and women to pay only half of the down payment (or 10 percent of the bid price) five business days after close of the auction. The remaining 10 percent payment will be deferred until five days after grant of the license.

II. DEFINITION OF BUSINESSES OWNED BY WOMEN AND MINORITIES

9. In the rules adopted pursuant to the *Third Memorandum Opinion and Order*, we changed the definition of a business owned by women and minorities for purposes of the regional narrowband PCS auction. *See* 47 C.F.R. §24.320(c). In particular, we departed from the definition adopted in the *Second Report and Order* that required minorities and/or women to have at least 50.1 percent ownership and a 50.1 percent controlling interest in the applicant. 47 C.F.R. § 1.2110(b)(2). The new definition requires an applicant owned by women and/or minorities to establish a "control group" consisting entirely of women or minorities that has both *de jure* and *de facto* control of the applicant. It then gives the applicant two options for taking on passive investors. Under the first option, a single investor may hold as much as 49.9 percent of the applicant's passive equity if the control group holds at least 50.1 percent of the total equity.[16] The second option allows the control group to reduce its equity stake to 25 percent provided that no single other investor holds more than 25 percent of the applicant's passive equity. Under either option, the control group must control the applicant and, in the case of corporations, hold at least 50.1 percent of the voting stock. For partnerships, all general partnership interests will be considered to be part of the control group.

10. In the *Third Memorandum Opinion and Order* we neglected, however, to explain this change in course. We take that opportunity here. We believe that the "control group" approach to defining a women or minority-owned business provides these designated entities with greater flexibility to access capital than the rule adopted in the *Second Report and Order*. In particular, it allows these companies to reduce by 25 percent the amount of equity the minority or women principals must hold. This ability to sell more equity will help designated entities raise the capital necessary to participate in the auctions as well as to construct their systems. Moreover, like the definition set forth in the *Second Report and Order*, the new rule gives a minority or women-owned company the option to partner with one large company instead of seeking multiple investors so long as the control group retains 50.1 percent of the equity. This option meets the needs of designated entities that are able to attract investors that desire a more substantial equity stake in the venture. Thus, we believe that modification of the definition of minority and/or women-owned businesses more fully satisfies the congressional mandate that the Commission provide the opportunity for companies owned by these designated entities to participate in spectrum-based services.

11. The new rule's requirement that investors take only passive interests also provides more assurance that the minority and women principals maintain control of their companies. As a result, we reduce the opportunity for fronts and help ensure that only *bona fide* designated en-

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[11] *See* Resolution Trust Corporation Refinancing, Restructuring and Improvement Act, Pub. L. No. 102-233, § 302, 105 Stat. 1761 (1991).

[12] Essence *ex parte* filing at 11-12.

[13] *See* 47 C.F.R. § 24.320(c). *See also infra* ¶ ¶ 9-13.

[14] *See* 47 C.F.R. §§ 24.129(b), 24.309(b)(2).

[15] *Compare* 47 C.F.R. § 24.711(a)(3). Standard installment payments -- at the 10-year treasury interest rate -- remain available to small businesses, including small businesses owned by minorities and/or women, on all regional licenses. *See Third Report and Order* in PP Docket No. 93-253, FCC 94-98 at ¶ ¶ 86-89 (released May 10, 1994).

[16] As provided in Section 24.320(g) of the Commission's rules, "passive equity" means "(i) for corporations, non-voting stock or stock that includes no more than fifteen percent of the voting equity; (ii) for partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity." 47 C.F.R. § 24.320(g).

tities will be able to take advantage of the 40 percent bidding credit and installment payments offered in the regional narrowband auctions.

12. In addition, we believe that modifying the definition in this manner provides consistency with the definition of a small business adopted in the *Third Memorandum Opinion and Order*, which also uses a "control group" approach. Thus, businesses will not have to satisfy disparate rules regarding levels of equity investment to receive both bidding credits and the installment payment option available to small businesses.

13. Although not explicitly stated in the *Third Memorandum Opinion and Order*, we also clarify here that we are departing from the provision in the *Second Report and Order* that bars publicly traded companies from qualifying as minority and women-owned businesses. This prohibition was based on our assumption that companies traded on the public market would not require government-sponsored measures to succeed in spectrum auctions. The high prices paid for the nationwide narrowband PCS licenses in the auction held in July 1994 has led us to conclude, however, that even publicly traded companies owned by women and minorities will require bidding credits and installment payments to participate successfully in the regional auction. We recognized these increased capital requirements in the *Third Memorandum Opinion and Order* by raising significantly the financial thresholds for qualifying for small business installment payments. The same rationale applies to our decision here to give publicly traded minority and women-owned applicants government assistance in the form of bidding credits and installment payments. We emphasize, however, that these companies must comply with the control group and equity investment requirements set out above and in our rules.

14. Finally, we do not intend to suggest that by clarifying this rule change here we have reached a decision regarding the designated entity issues raised by petitioners in the broadband PCS auction proceeding. After further analysis of those petitions, it is possible that we will make additional adjustments to our rules with regard to broadband PCS. In addition, if those changes loosen the restrictions on designated entities, we may decide to apply them to designated entity licensees in the regional narrowband service.

III. CONCLUSION

15. Accordingly, IT IS ORDERED THAT Part 24 of the Commission's Rules is amended as set forth in the attached Appendix.

16. IT IS FURTHER ORDERED that the rules changes made herein WILL BECOME EFFECTIVE 30 days after their publication in the Federal Register. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 303(r) and 309(j).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

RULES

Part 24 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.309 is revised to read as follows:

Sec. 24.309 Designated Entities.

* * * * *

(b) * * *

(1) Installment payments.

(i) Small businesses, including small businesses owned by members of minority groups and women, will be eligible to pay the full amount of their winning bids on any regional, MTA or BTA license in installments over the term of the license pursuant to the terms set forth in Section 1.2110(e) of this Chapter.

(ii) Businesses owned by members of minority groups and women that are winning bidders for the regional licenses indicated by an (**) in Section 24.129 may pay the full amount of their winning bids (less the applicable bidding credit and down payment) in installments with (A) interest imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; (B) interest-only payments for the first two years; and (C) principal and interest payments amortized over the remaining eight years of the license.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Contel Cellular Inc.	File Nos.
(Transferor)	06127-CL-TC-1-93
	06128-CL-TC-1-93

and

NYNEX Mobile Communications Company (Transferee)

For Transfer of Control of Vermont RSA Limited Partnership, Licensee of Stations KNKQ284 and KNKN916 in Vermont RSAs 1 and 2

MEMORANDUM OPINION AND ORDER

Adopted: September 20, 1994: Released: September 20, 1994

By the Chief, Mobile Services Division:

I. INTRODUCTION

1. In this Order, we address applications filed jointly by Contel Cellular Inc. ("Contel" or the "transferor") and NYNEX Mobile Communications Company ("NYNEX" or the "transferee") that seek the Commission's consent to transfer control of Vermont RSA Limited Partnership ("Partnership" or the "licensee"). We also address a petition to deny filed by Topsham Telephone Company ("Topsham" or the "petitioner") and an opposition to the petition to deny filed by Contel.[1] For the reasons discussed below, we deny the petition to deny and we grant the applications.

II. BACKGROUND

2. The licensee is a partnership composed solely of one general partner and one limited partner. The general partner and holder of 83.27 percent of Partnership is Contel Cellular of Vermont, Inc. (CCVI), a wholly owned subsidiary of Contel. The limited partner and holder of 16.73 percent of Partnership is Topsham. The contemplated result of the proposed transaction is that NYNEX will acquire complete ownership of CCVI and thus *de jure* control of Partnership. Topsham will continue to own its limited partnership interest in Partnership.

III. DISCUSSION

3. Preliminarily, it should be noted that Section 310(d) of the Communications Act of 1934 (the Act) requires that the Commission find that the public interest, convenience, and necessity will be served by the transfer of control of a company holding a radio license. Subsumed therein is the requirement that we review, as may be appropriate, the citizenship, character, and financial, technical, and other qualifications of the transferee applicant.[2] Based on our review of the subject applications, we find that NYNEX has met these threshold qualification requirements. We now turn our attention to the matters raised by Topsham.

4. Section 309(d) of the Act, implemented by Section 22.30 of the Commission's Rules, prescribes the standards for petitions to deny applications such as those now before us.[3] The statute and our rules require that a petition to deny be filed within 30 days of the public notice announcing the acceptance of the subject filing,[4] and that the allegations contained in the petition concern matters over which the Commission has jurisdiction.[5] As we demonstrate below, Topsham has failed to meet these requirements.

5. *Timeliness:* The record indicates that the applications for the proposed transfers of control appeared on public notice on October 19, 1993.[6] The deadline for filing petitions to deny the applications was, therefore, November 18, 1993. Topsham, however, did not file its petition to deny until January 24, 1994. Consequently, the petition was untimely and is subject to dismissal on this basis.

6. *Jurisdiction:* Topsham submits that the applications should be denied because Contel and NYNEX have misrepresented to the Commission, as well as to the Vermont Public Service Board, that the proposed transaction is a transfer of control, when it is in fact an assignment. The underlying motive for the alleged misrepresentation, claims the petitioner, is to deny Topsham its guaranteed right to acquire control of Partnership. Topsham explains that Section 14.1 of the governing partnership agreement confers on it a right of first refusal before the general partner's interest can be sold or assigned. Therefore, claims Topsham, Contel and NYNEX have falsely characterized their proposed transaction as a "stock sale", or a transfer of control, in order to circumvent Contel's obligation to Topsham. Because the parties have misrepresented the true nature of the proposed transaction, says Topsham, the applications cannot now be granted, and, at minimum, should be designated for hearing.

7. Regarding the transfer of Commission authorizations, an assignment occurs when radio facilities are sold and the attendant licenses convey with the facilities, resulting in a new licensee. In a transfer of control, however, the licensee does not change, but the owners of the licensee do. This is because the new owners acquire a controlling interest in the licensee. Simply put, an assignment is an asset sale, and a transfer of control is a stock sale.[7]

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[1] NYNEX did not file an opposition or join Contel in its opposition, and no reply to the opposition was filed by Topsham.

[2] *Centel Corporation*, 6 FCC Rcd 1003, 1004-05 (1991); *see also* 47 U.S.C. §§ 308(b), 310(d).

[3] 47 C.F.R. § 22.30.

[4] 47 C.F.R. § 22.30(a)(4).

[5] *See, e.g., Regents of the Univ. of Ga. v. Carroll*, 338 U.S. 586, 602 (1950).

[6] *Public Notice*, Report No. CL-94-5 (October 19, 1993).

[7] *See* S. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communication Act of 1934*, 43 Fed. Comm. L.J. 277, 285-86 (1991).

8. We have examined the description of the transaction contained in the applications' Public Interest exhibits and Paragraph 6 of a Joint Petition filed with the Vermont Service Board by Contel and NYNEX, which has been supplied by Topsham, and we find that a *prima facie* transfer of control will result from NYNEX's acquisition of the CCVI stock. Thus, we do not agree with Topsham that the parties have misrepresented this transaction. This leads us the gravamen of Topsham's petition, *to wit:* it has been denied the right of first refusal, allegedly in violation of the terms of the partnership agreement.

9. Whether Contel has violated the terms of the partnership agreement with Topsham is a matter over which the Commission lacks jurisdiction.[8] The alleged denial of a right of first refusal amounts to a contractual dispute between Topsham and Contel and, thus, is a matter for resolution by state court or other local fora having jurisdiction to decide the issue.[9] There is no reason for us to withhold action on the applications pending resolution of this dispute. Granting the applications simply authorizes the transfer of control of the licensee to take place. The forum having jurisdiction over the parties could enjoin the stock sale from going forward until it decides the respective rights of the parties.[10]

IV. CONCLUSION

10. In summary, we find Topsham's petition to be defective. We also find that grant of the applications would serve the public interest.

V. ORDERING PARAGRAPHS

11. Accordingly, IT IS ORDERED THAT, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the petition to deny filed by Topsham Telephone Company IS DISMISSED.

12. IT IS FURTHER ORDERED THAT the applications of Contel Cellular, Inc. and NYNEX Mobile Communications Company (File Nos. 06127-CL-TC-1-93 and 06128-CL-TC-1-93) ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

John Cimko
Chief, Mobile Services Division
Common Carrier Bureau

[8] *See Charlotte L. Olive*, 6 FCC Rcd 5960 (1991).
[9] *See Metromedia Company*, 3 FCC Rcd 595 (1986).
[10] *See Radio Galion, Inc.*, 35 R.R. 2d 1209, 1210 (1975).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-162

In the Matter of

Local Exchange Carriers' Rates,
Terms, and Conditions for
Expanded Interconnection for
Special Access

Pacific Bell Transmittal No. 1731
Revisions to Tariff
F.C.C. No. 128

MEMORANDUM OPINION AND ORDER

Adopted: September 21, 1994; Released: September 21, 1994

By the Deputy Chief, Tariff Division:

1. On August 8, 1994, Pacific Bell filed Transmittal No. 1731 to revise its Tariff F.C.C. No. 128.[1] Pacific Bell proposes revising its low speed to special access cross connect for its expanded interconnection service. The revised low speed cross connect will interconnect with Pacific Bell's special access telegraph grade service. Pacific Bell states that the purpose of this filing is to respond to *bona fide* requests from customers. Description and Justification at 1. No petitions were filed against this tariff. Transmittal No. 1731 is scheduled to take effect on September 22, 1994.

2. This transmittal raises the same issues regarding cost allocation, rate levels, rate structures, and terms and conditions of service as those identified in the *Expanded Interconnection Tariff Order*.[2] Therefore, Transmittal No. 1731 is suspended for one day, until September 23, 1994, and will be subject to the investigation initiated in the *Expanded Interconnection Tariff Order*. These rates will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

3. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revisions to Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1731, ARE SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

4. IT IS FURTHER ORDERED that Pacific Bell SHALL FILE tariff revisions within five business days of the release date of this Order to reflect this suspension.

5. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. Pacific Bell should cite the "DA" number of the instant Order as the authority for this filing.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), Pacific Bell shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

David A. Nall
Deputy Chief, Tariff Division
Common Carrier Bureau

[1] On August 9, 1994, Pacific Bell amended Transmittal No. 1731 to include certain cost information that it states it inadvertently omitted from the original filing. Pacific Bell asserts that this amendment has no effect on any rates filed in Transmittal No. 1731.

[2] Ameritech Operating Companies, *et. al*, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com. Car. Bur. 1993) (*Expanded Interconnection Tariff Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Crescomm Transmission Services, Inc., Assignor,	File Nos. CSG-94-111-AL ITC-94-273 1118-DSE-AL-94(5)
and	
Holmdel Telecommunications Group, Inc., Assignee,	

Application for authority, pursuant to Sections 214 and 310 of the Communications Act of 1934, as amended, to assign Section 214 authorizations and domestic and international earth station licenses.

MEMORANDUM, OPINION AND ORDER

Adopted: September 13, 1994; Released: September 29, 1994

By the Chief, International Facilities Division:

I. INTRODUCTION

1. Crescomm Transmission Services, Inc., ("CTS") and Holmdel Telecommunications Group, Inc., ("HTG") (collectively "the Applicants"), pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, submitted the above-captioned applications requesting authority to assign from CTS to HTG: (1) two Title III radio licenses for international satellite earth stations.[1] (2) four Section 214 Certificates to HTG;[2] and (3) five domestic satellite earth stations.[3] These applications were placed on public notice and no comments were received.

II. BACKGROUND

2. CTS' principal business is the provision of domestic and international satellite transmission and distribution services. HTG, a New Jersey corporation, does not provide services that are subject to regulation under the Communications Act of 1934, as amended. HTG is wholly-owned by the current directors of CTS. CTS, a Utah corporation is 98.4% owned by International Tele-marine Corporation (ITC), a Florida corporation.[4] ITC acquired CTS pursuant to an August 4, 1993, Stock Purchase Agreement ("Agreement"), which was executed on or about December 16, 1993. CTS states that shortly after the execution of the Agreement, it learned that it had violated the Commission's Rules by consummating the deal without prior Commission consent. In addition, CTS states that because ITC is 55% foreign owned, the Agreement exceeds the Commission's foreign ownership benchmarks.[5]

3. CTS explains that it took several steps to remedy the situation. First, on March 3, 1994, the parties executed a Voting Agreement, which restored voting control of ITC's shares to the directors of CTS[6] until: (a) the Commission approves assignment of the CTS licenses to a qualified third party; (b) the Commission approves a transfer of control of CTS; or, (c) ten years go by. Second, the parties amended the Stock Purchase Agreement on March 7, 1994, to ensure that actual control of CTS' licenses and authorizations would not be conveyed to ITC and to make the amendment retroactive to the execution date of the original Agreement. Third, the parties reduced foreign ownership of ITC to 21.025% of its equity, and (through the multiplier effect) 20.68% of the equity of CTS, well below the benchmark set under Section 310 of the Communications Act and Section 21.4(g) of the Commission's Rules. Moreover, on March 11, 1994, CTS' counsel voluntarily informed the Commission by letter that the Applicants did not realize until consulting with counsel, after the transfer, that prior Commission approval was required or that foreign owner-

[1] The two Title III radio licenses for satellite earth stations are: Call Sign KA-257, File Nos. CSG-88-079-P/L(A) and CSG-90-016-ML; and, Call Sign: KA-322, File Nos. CSG-91-128-P/L and CSG-93-013-ML.

[2] The four 214 Certificates are: (1) *Crescomm Transmission Services*, Inc., 3 FCC Rcd 2149 (1988) (granting authority to establish channels of communication between the U.S. and INTELSAT Atlantic Ocean Region (AOR) satellites for provision of INTELSAT Business Services (IBS) and International Television Service); (2) *Crescomm Transmission Services, Inc.*, 4 FCC Rcd 7000 (1989) (granting authority to establish channels of communication between its Holmdel, New Jersey, earth station and INTELSAT AOR satellites for provision of multipurpose services); (3) *Crescomm Transmission Services, Inc.*, 7 FCC Rcd 6614 (1992) (granting authority to establish channels of communication between the U.S. and those countries served by INTELSAT AOR satellites and Pan American Satellite (PAS) satellites for the provision of IBS, International Television Service, and International Datanet Service and those services which PAS is authorized to provide); and, (4) *Crescomm Transmission Services, Inc.*, 8 FCC Rcd 1786 (1993) (granting authority to operate channels of communication between the United States and the Russian Statsionar 4 and Statsionar 11 satellites for the provision of international communications).

[3] The five domestic satellite earth station call signs are: E860029; E859623; E910614; E900624; and E8926. All but the last two earth stations have international authority also.

[4] ITC, the owner of CTS, is in the business of marketing telecommunications services to cruise-ship passengers.

[5] Section 310(b)(4) of the Communications Act of 1934, as amended, states that, "No . . . common carrier . . . license shall be granted to or held by - [a]ny corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license."

[6] CTS' current directors are: Richard A. Hadsall, William F. LaShell, Richard Janowski, Z. Jerry Kuliga, Russell A. Rocca, and Louis V. Napolitano. Each director is also a HTG shareholder and the group retains 98.4% voting control of CTS' voting stock.

ship was an issue. Counsel stated that the Applicants regret the oversight, that they are now aware of the Commission's Rules, and are committed to complying with these obligations, as evidenced by their progress thus far.

III. DISCUSSION

4. The Applicants request authorization for the assignment of two international satellite earth station licenses, five domestic satellite earth station licenses, and four Section 214 Certificates. The two carriers have entered into an agreement, subject to Commission approval, whereby HTG would acquire all licenses and authorizations currently held by CTS and CTS would cease to be a Commission licensee. Additionally, the agreement specifies that HTG will provide operational services to CTS in exchange for the use of equipment and facilities owned by CTS.

5. The Applicants state that granting this application will serve the public interest. First, the applicants indicate that consummation of the proposed transaction will solve the foreign ownership problem of the CTS-ITC transaction because HTG has no foreign ownership component. Second, the applicants contend that it would promote competition among international carriers. Third, the applicants argue that the same officers, directors and owners of CTS, which have already demonstrated their operational and service capabilities and qualifications to serve as a Commission licensee in operating CTS, will serve in similar capacities for HTG. Lastly, the applicants assert that approving the assignment of the Section 214 Certificates and the Title III licenses will allow the parties to realize significant economic and marketing efficiencies that will advance the public interest.

6. In view of the foregoing, we conclude that consent to the transfer of control of CTS' two international and five domestic Title III radio licenses, and four Section 214 Certificates, from CTS to HTG will serve the public interest, convenience and necessity. However, our finding here is without prejudice to any further action the Commission might take with respect to the CTS-ITC transaction that occurred without prior Commission approval and that exceeded the Commission's foreign ownership benchmarks.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 214, 310(d), and Section 63.01 of the Commission's Rules, 47 C.F.R. § 63.01, that the application of Crescomm Transmission Services, Inc., and Holmdel Telecommunications Group, Inc., File Nos. CSG-94-111-AL, 1118-DSE-AL-94(5), and ITC-94-273 ARE GRANTED and we consent to the assignment from CTS to HTG of the seven Title III radio licenses for satellite earth stations listed in notes 1 and 3 herein, and the four international Section 214 Certificates listed in note 2. However, this consent is without prejudice to any further action the Commission might take with respect to CTS' unauthorized transfer of control to ITC.

8. IT IS FURTHER ORDERED, pursuant to Section 203 of the Communications Act, as amended, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, that HTG must continue to maintain tariffs for the services authorized in this order.

9. IT IS FURTHER ORDERED that HTG must file annual reports of overseas telecommunications traffic as required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

10. IT IS FURTHER ORDERED that HTG shall file semi-annual reports of circuit additions to cerficated points, pursuant to Section 63.15 of the Commission's Rules, 47 C.F.R. § 63.15.

11. This order is issued under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2), 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

WILTEL, INC.,
Complainant,

v.

US WEST COMMUNICATIONS, INC.
Defendant.

File No. E-93-131

ORDER

Adopted: September 21, 1994; Released: September 29, 1994

By the Chief, Formal Complaints & Investigations Branch, Enforcement Division, Common Carrier Bureau:

1. On September 28, 1993, WilTel, Inc. (WilTel) filed the above-captioned complaint against US West Communications, Inc. (US West) seeking damages resulting from US West's alleged violations of the Commission's rate of return prescription for the period January 1, 1989 through December 31, 1990. On September 14, 1994, the parties filed a joint motion to dismiss the complaint. In support of their motion, the parties state that they have settled all claims in this proceeding.

2. We are satisfied that granting the parties' joint motion to dismiss will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources by the parties and by the Commission.

3. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and the authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Joint Motion to Dismiss IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED WITH PREJUDICE and the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas D. Wyatt
Chief, Formal Complaints and
Investigations Branch
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-112

In the Matter of

Amendment of Section 73.202(b), RM-8516
Table of Allotments,
FM Broadcast Stations.
(Farmville, Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 19, 1994; Released: September 30, 1994

Comment Date: November 21, 1994
Reply Comment Date: December 6, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Farmville Herald, Inc. ("petitioner"), requesting the allotment of Channel 225A to Farmville, Virginia, as the community's third local commercial service. Petitioner states it will apply for Channel 225A, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 225A to Farmville, since it could provide the community with an additional local FM service. Channel 225A can be allotted to Farmville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Farmville, Virginia	239B, 267A	225A, 239B, 267A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **November 21, 1994** and reply comments on or before **December 6, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Matthew H. McCormick
Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1),303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO

[1] The coordinates for Channel 225A at Farmville are North Latitude 37-18-00 and West Longitude 78-23-48.

AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-111

In the Matter of

Amendment of Section 73.202(b),	RM-8519
Table of Allotments,	
FM Broadcast Stations.	
(Ingalls, Kansas)	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 19, 1994; Released: September 30, 1994

Comment Date: November 21, 1994
Reply Comment Date: December 6, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Dana J. Puopolo ("petitioner"), requesting the allotment of Channel 290A to Ingalls, Kansas, as the community's first local aural transmission service. Petitioner states she will apply for Channel 290A, if it is allotted to Ingalls.

2. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies" ... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. In this regard, petitioner states that Ingalls is an incorporated town in southwestern Kansas. However, the Commission's staff is unable to confirm petitioner's claim. We note that Ingalls is listed in the 1994 Rand McNally Commercial Atlas and is attributed with a population of 301 persons, but this fact alone is not sufficient to establish "community" status for allotment purposes.[1] Since Ingalls is not listed in the U.S. Census, petitioner should present the Commission with sufficient information to demonstrate that Ingalls is incorporated, or that it has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes.[2]

3. We believe the public interest would be served by proposing the allotment of Channel 290A to Ingalls, if it is ultimately found to be a community for allotment purposes, since it could provide a first local aural transmission service to the community. Channel 290A can be allotted to Ingalls in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[3]

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Ingalls, Kansas	--	290A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 21, 1994** and reply comments on or before **December 6, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dana J. Puopolo
37 Martin Street
Rehoboth, Massachusetts 02769-2103
(Petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission

[1] *See, Vimville, Mississippi*, 48 FR 5974 (1983), *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991), and *Columbia, California*, 56 FR 26357 (1991), 6 FCC Rcd 3292 (1991), 6 FCC Rcd 3292 (1991).

[2] *See, e.g., Beaver Springs, Pennsylvania*, 4 FCC Rcd 5373 (1989), *Sargent, Nebraska*, 4 FCC Rcd 3933 (1989), *Bartow, Georgia, et al.*, 4 FCC Rcd 6876 (1989), *East Hemet, California, et al.*, 4 FCC Rcd 7895 (1989), and *Ellwood, California*, 50 Fed. Reg. 13031., published April 2, 1985.

[3] The coordinates for Channel 290A at Ingalls are North Latitude 37-49-48 and West Longitude 100-27-06.

specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1),303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

Complaint of Central Missouri State University against Douglas Cable Communications — CSR-3965-M

Petition for Reconsideration

MEMORANDUM OPINION AND ORDER

Adopted: September 22, 1994; Released: September 30, 1994

By the Chief, Cable Services Bureau:

1. On June 17, 1994, a petition for reconsideration and an emergency petition for stay[1] were filed, on behalf of Douglas Communications Corporation II ("Douglas"), operator of a cable system serving Cass County, Missouri. Douglas requests that the Commission reconsider its May 3, 1994 action[2] ordering its Cass County system to add Station KMOS-TV (Educ., Ch. 6), Sedalia, Missouri. No opposition to this petition has been received.

2. In support of its request, Douglas states that the principal headend for its Cass County system is located in Belton, Missouri and not Greenville, Missouri as indicated by KMOS-TV in its original complaint. Douglas states further that Belton is located 68 miles from Sedalia, Missouri, the city of license for KMOS-TV, and that it lies outside the predicted Grade B contour of the station.[3] As a result, Douglas maintains that KMOS-TV is not a must-carry station pursuant to the Commission's rules and it is not entitled to carriage on its Cass County system.

3. Staff review of the undisputed showing submitted by Douglas confirms its contention that KMOS-TV is not a must-carry station for its Cass County, Missouri system. Accordingly, the petition for reconsideration, filed June 17, 1994, on behalf of Douglas Communications Corporation II IS GRANTED, and our Order adopted May 3, 1994, IS RESCINDED, pursuant to authority delegated in §§0.321 and 1.106 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Acting Chief, Cable Services Bureau

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[1] In view of our action herein, we need not discuss the merits of this petition.

[2] *Central Missouri State University against Douglas Cable Communications*, 9 FCC Rcd 2267 (1994).

[3] Douglas submits a map of KMOS-TV's predicted Grade B contour in relation to Belton, Missouri.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: September 23, 1994

EXPANDED INTERCONNECTION --
TANDEM-SIGNALLING
(Docket No. 91-141)

PLEADING CYCLE ESTABLISHED REGARDING WAIVER REQUEST FILED BY SOUTHWESTERN BELL TELEPHONE COMPANY

On September 20, 1994, Southwestern Bell Telephone Company (SWBT) filed a request for waiver of certain requirements contained in the Commission's *Third Report and Order, Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, FCC 94-118, 9 FCC Rcd 2718 (1994). Specifically, SWBT requests waiver of: (1) the requirement that local exchange carriers (LECs) file tariffs offering signalling information services by September 26, 1994, to take effect November 10, 1994; (2) the LEC requirement to provide signalling information via Signalling System 7 (SS7) networks; (3) the requirement that LECs use data provided by tandem switching providers (TSPs) for billing access customers; and (4) any requirement that LECs permit overflow traffic between TSP tandems and LEC tandems. SWBT claims that an extension is necessary due to its inability to have billing mechanisms in place by the November 10 effective date of the tariffs. In addition, SWBT alleges that even after November 10, 1994, it will be unable to bill interexchange carriers properly if required to provide signalling information to TSP tandems via SS7. It argues that the only way to distinguish usage of a SWBT tandem from a TSP tandem is by referencing a trunk group number (TGN) and that in an SS7 environment, the TGN placed on the network recording cannot be relied upon by SWBT for accurate billing.

The SWBT waiver petition is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or a copy may be purchased from the Commission's copy contractor, ITS, Inc. 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800.

Interested parties should file comments on the SWBT waiver petition by **October 7, 1994** and replies by **October 14, 1994**, with the Secretary, Federal Communications Commission (FCC), 1919 M Street, N.W., Washington, D.C. 20554. Copies also should be sent to Gary Phillips and Peggy Reitzel, Policy and Program Planning Division, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554 and to ITS, Inc. 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. For further information, contact Gary Phillips, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1573.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
September 19, 1994

Released: September 19, 1994

Office of Media	In Reply Refer To:
and Telecommunications	1800C1-CMW
Board of Education of	92110684
the City of New York	92120695

Licensee, Noncommercial Station WNYE-TV
131 Livingston Street,
Brooklyn, New York 11201

Dear Licensee:

As you know, we have been investigating allegations that Station WNYE-TV has violated Section 399B of the Communications Act of 1934, as amended (the "Act"). This letter details the results of our investigation.

Section 399B of the Act, as implemented by Section 73.503 of the Commission's Rules, prohibits public broadcast stations from broadcasting advertisements. Advertisements are defined by the Act as program material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" of for-profit entities. 47 U.S.C. § 399B. Although contributors of funds may receive on-air acknowledgements, the Commission has unequivocally stated that such acknowledgements may be made for identification purposes only and should not promote the contributor's products, services, or company. Specifically, such announcements may not contain comparative or qualitative descriptions, price information, calls to action, or inducements to buy, sell, rent or lease. See *Public Notice*, "In the Matter of the Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations," 7 FCC Rcd 827 (1986).

By letter of October 23, 1992, we cautioned you about several Korean language donor underwriting announcements that Station WYNE-TV aired in the fall of 1991 and January 1992 that appeared to be promotional in nature. *Board of Education of the City of New York*, 7 FCC Rcd 6864 (MMB 1992). Specifically, we found that the video portion of some of the announcements at issue contained qualitative information and calls to action, and that the audio portion of some of the announcements contained prohibited price information and a qualitative description of the donor's product.

In late November, we received information from the same complainant, indicating that Station WNYE-TV was continuing to air promotional announcements during its Korean language programming. Further, it was alleged that one of the announcements still being broadcast (Han-Yang Supermarket) was identical to an announcement we found objectionable in our cautionary letter. On December 30, 1992, we inquired as to this announcement and seven others that were the subject of the complaint.[1]

You responded that, with respect to the Han-Yang Supermarket announcement, Station WNYE-TV had specifically deleted the portion of the announcement that the Commission found contained prohibited price information, *i.e.*, "We provide pleasure in convenience and the wisdom of thrift." With respect to four other announcements (Movado Museum Watch, New York Golf Center, Ox Tail Soup, and Korean Airlines), you provided English translations which differ slightly from the interpretations provided by the complainant. See Attachment 1 hereto. You point out that word-for-word translations, such as those provided by the complainant, fail to capture the actual, commonly-understood meaning of the translated phrases as a whole. In addition, you assert that the Movado Museum Watch and Korean Airlines announcements merely recite well-known mottos or slogans. Based upon your interpretations of the first three announcements, we do not find them to be in violation of Section 399B of the Communications Act or Section 73.503 of our Rules. In addition, we find that the audio portion of the Korean Airlines advertisement complies with the Act and our Rules.

However, as you admit in your response, the video portion of the Korean Airlines announcement violates the Commission's Rules. The video (a smiling flight attendant serving food to a smiling patron in the passenger compartment) showed the product (the airline) in operation and employees interacting with satisfied customers, thereby conveying a message as to the quality of service. Since the issuance of our letter of inquiry, you indicate that this announcement has been replaced.

Finally, you state that three of the announcements we inquired about appeared in the "KCTV Guide," a video bulletin board produced by Korean Cultural Television ("KCTV"). These announcements (as translated by the complainant) are as follows:

> 1) "Dr. In Hyun Park (chiropractor) . . . will have free consultation and diagnostic service during the month of November."
>
> 2) "Troycar . . . sells only good cars . . . will have special sales. . . . have a joy in owning a new car by taking advantage of this discount sale. . . . special sales include Honda, BMW . . . ." On screen print: "Troycar 92 model inventory sale"
>
> 3) "The beauty specialist Erika Park will have a big sale at her cozy International Hair Studio until November 26, 1992, to celebrate its anniversary. $24 for a haircut, massage for $30 for men and women, and 30% discount for perms."

All three of these announcements contain prohibited price information. In addition, the Troycar and Erika Park announcements contain impermissible comparative and qualitative descriptions (*i.e.*, good cars, special sales, big sale, and cozy studio). You acknowledge that you did not review these announcements prior to their broadcast and were unaware of their existence because, contrary to your

[1] Shortly after our December letter of inquiry, we received a complaint from a second complainant, which made the same allegations regarding the promotional aspects of underwriting announcements broadcast on Station WNYE-TV during its Korean language programming.

agreement with KCTV, it failed to provide you advance tapes of the announcements. You claim that once Station WNYE-TV's staff discovered these announcements, you terminated the underwriting relationships and deleted the announcements. By letter of June 25, 1993, you also advise that you terminated all relationships with KCTV.

In addition to terminating your relationship with KCTV, you indicate that a number of corrective measures were taken. These include the cancelling of every underwriting announcement at issue and the modification of every announcement aired during Korean language programming. We have received no additional complaints since these corrective measures were adopted. Further, the application for renewal of Station WNYE-TV's license was granted on May 31, 1994. Since these violations occurred two years ago in a prior license term, we may not issue a forfeiture in this case. *See* 47 U.S.C. § 503(b)(6).

Accordingly, based on the evidence before us, you are HEREBY ADMONISHED for violating Section 399B of the Communications Act and Section 73.503 of the Commission's Rules. You are expected to use care to comply with these requirements in the future. Any additional findings of violation may result in harsher sanctions. This letter will be made part of Station WNYE-TV's complaint file.

Sincerely,

Norman Goldstein, Chief
Complaints and Investigations Branch
Enforcement Division
Mass Media Bureau

cc: Marcia Cranberg, Esq.

ATTACHMENT 1

TRANSLATIONS OF FINAL FOUR UNDERWRITING ANNOUNCEMENTS

1. MOVADO MUSEUM WATCH.

Audio: "Movado Museum Watch, another famous Swiss-made product. Movado is available at KIKY."

Video: Location address and telephone number.

3. NEW YORK GOLF CENTER.

Audio: "The department store specializing in golf -- New York Golf Center, providing everything. Located near Macy's."

Video: Location address and telephone number.

3. OX-TAIL SOUP.

Audio: "New York Gom Tang House specializing in Ox-tail Soup. Through long experience and skill, we have made instant Ox-tail soup in a can. Gom Tang made from the tail of the branded cow [ox], available at oriental grocery stores."

Video: Name superimposed.

4. KOREAN AIRLINES.

Audio: "Comfortable like your own home. Korean Airlines will try its best. Our wings, Korean Air."

Video: Superimposition of "Korean Air".

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELEFONICA LARGA DISTANCIA DE PUERTO RICO, INC. — File No. I-T-C-94-252

Application for modification of authority to provide international message telephone services between Puerto Rico/U.S. Virgin Islands and the Dominican Republic

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: September 21, 1994; Released: September 30, 1994

By the Chief, International Facilities Division:

1. We have before us the above-captioned uncontested application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, by Telefonica Larga Distancia de Puerto Rico, Inc. ("TLD"). In its application, TLD requests a modification of its existing authority to provide International Message Telephone Services ("IMTS") between points in Puerto Rico/U.S. Virgin Islands and points in the Dominican Republic. This application was placed on public notice April 13, 1994, and no comments were received. For the reasons stated below, we grant this application.

2. TLD is already authorized to provide IMTS between Puerto Rico/U.S. Virgin Islands and the Dominican Republic.[1] However, TLD requests authority to use additional microwave circuits, in lieu of its authorized satellite circuits. TLD currently has authority to employ 316 circuits as follows: 30 circuits over the TCS-1 Cable System, 120 microwave circuits by use of Telecommunicaciones Ultramarinas de Puerto Rico's (TUPR's) point-to-point microwave facilities between Monte del Estado in Puerto Rico and Otra Banda in the Dominican Republic, and 166 international satellite circuits via INTELSAT. TLD does not seek any increase in its authorized capacity. Instead, TLD requests authority to switch 120 circuits from satellite to microwave. As a result, TLD would still have authority to use 316 circuits as follows: 30 cable circuits, 240 microwave circuits and 46 satellite circuits.

3. TLD will lease these additional microwave circuits from TUPR at TUPR's tariffed rate. TLD states that the modification of its authority as requested will not distort settlements, traffic flow or return traffic between Puerto Rico and any of TLD's correspondents in the countries involved. According to TLD, it would save $123,800 per month by using 120 microwave circuits instead of 120 satellite circuits. Therefore, TLD states grant of this application will serve the public interest by allowing improvement in the efficiency of its services to the Dominican Republic, and thus offer more satisfactory, efficient and economical service to its customers.

4. We find that the public interest would be served by granting this application. This shift in TLD's authorized authority will allow TLD to operate more efficiently, thus encouraging lower rates and improved service for the public. Further, because TLD is not requesting an increase in the overall number of its authorized circuits to the Dominican Republic, this application is not the type of facilities application that requires review by the full Commission. Therefore, the Commission has delegated to us the authority to act on this application.[2]

5. Upon consideration of the subject application, IT IS ORDERED that application File No. I-T-C-94-252 IS GRANTED, and TLD is authorized to:

a. lease from TUPR and operate an additional 120 half-circuits on TUPR's Monte del Estado microwave system, matching with facilities furnished by TLD's correspondent in the Dominican Republic; and

b. use these additional 120 circuits to provide IMTS between Puerto Rico, the U.S. Virgin Islands and the Dominican Republic.

6. IT IS FURTHER ORDERED that TLD's authorization to provide international services between Puerto Rico, the U.S. Virgin Islands and the Dominican Republic via 166 INTELSAT circuits IS MODIFIED, and TLD is authorized to use only 46 circuits via INTELSAT for these services.

7. IT IS FURTHER ORDERED that the Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

8. IT IS FURTHER ORDERED that neither TLD nor any persons or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which TLD or any persons or companies controlling or controlled by TLD are parties.

9. IT IS FURTHER ORDERED that TLD shall file with the Commission copies of any operating agreements it enters into with its foreign correspondent in the Dominican Republic with the Commission within 30 days of the execution of such agreements, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.

[1] *See Telefonica Larga Distancia, et al.*, 8 FCC Rcd 106 (1992) (*TLD Order*), Appendix A.

[2] *See Telefonica Larga Distancia de Puerto Rico, Inc.*, FCC 94-197, note 12, released August 8, 1994.

10. IT IS FURTHER ORDERED that TLD shall not route traffic to or from third countries for which it does not have authorization under Section 214 of the Communications Act.

11. IT IS FURTHER ORDERED that TLD shall file quarterly reports of revenue, number of messages, and number of minutes of both originating and terminating traffic for all international services between the United States and each country TLD is authorized to serve, including the Dominican Republic.

12. IT IS FURTHER ORDERED that TLD shall file tariff provisions pursuant to Section 203 of the Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

13. IT IS FURTHER ORDERED that TLD shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

14. IT IS FURTHER ORDERED that TLD shall seek, pursuant to Section 63.01 of the rules, additional authorization under Section 214 of the Communications Act before adding or deleting circuits to the Dominican Republic, or before otherwise using the circuits authorized in this order in a manner other than as specified for the provision of the services authorized herein.

15. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PRIVATE NETWORK CABLE SYSTEMS — CSR-4233-P

v.

SPORTSCHANNEL ASSOCIATES

Unfair Practices and Discrimination
Program Access Complaint

ORDER

Adopted: September 22, 1994; Released: September 23, 1994

By the Chief, Cable Services Bureau:

1. Private Network Cable Systems Company ("PNC") filed a program access complaint against SportsChannel Associates ("SportsChannel"), a satellite cable programming vendor, with the Commission on March 7, 1994, alleging violations of Section 628 of the Communications Act of 1934, *as amended*, 47 U.S.C. § 548. PNC alleged that SportsChannel refused to provide programming to PNC and that SportsChannel's proposed licensing agreement was discriminatory. PNC operates a satellite master antenna television system in two multiple dwelling units ("MDUs") in the Borough of Queens in New York City.

2. On April 1, 1994, SportsChannel filed an answer, denying the allegations in the Complaint. PNC filed a reply on April 25, 1994. The parties, however, continued to negotiate.

3. On September 13, 1994 PNC advised the Commission that it has withdrawn the complaint because the issues in the complaint had been amicably settled by the parties.

4. The Commission encourages resolution of program access disputes through negotiations between the parties in an effort to avoid time-consuming, complex adjudication. Such a policy favoring private settlement and alternative dispute resolution conserves Commission resources and is thus in the public interest. *See* First Report and Order in MM Docket No. 92-265, 8 FCC Rcd 3359, 3389, 3416 (1993).

5. We thus find that it is in the public interest to terminate this proceeding pursuant to the settlement negotiated by the parties.

6. Accordingly, IT IS ORDERED, that the Complaint of Private Network Cable Systems IS DISMISSED WITH PREJUDICE. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by Section 0.321 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Acting Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992:	**MM Docket No. 93-215**
Rate Regulation	**MM Docket No. 93-266**

FIFTH ORDER ON RECONSIDERATION AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: September 12, 1994; Released: September 26, 1994

By the Commission:

Comment Date: November 16, 1994
Reply Comment Date: December 16, 1994

I. INTRODUCTION

1. In this *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking* we consider whether to establish a ninety-day period after the initial date of regulation in which small operators may restructure rates and service offerings to comply with our rules governing regulated cable services, and whether to permit such rates and service offerings to be implemented without prior regulatory approval. We also seek comment on definitions of small businesses that could be used to define eligibility for any special rate or administrative treatment that could be established for cable operators in final rules in the above-captioned proceedings.

II. FIFTH ORDER ON RECONSIDERATION

A. Background

2. Pursuant to the Cable Television Consumer Protection and Competition Act of 1992,[1] the Commission has established a comprehensive regulatory framework governing rates for regulated cable services and equipment.[2] Under that framework, all regulated cable systems generally must set rates based on a 17 percent competitive rate reduction from September 30, 1992 levels unless the system (1) is eligible for temporary transition relief, pending the completion of cost studies by the Commission, (2) is eligible for streamlined rate relief pending the completion of our cost studies, or (3) justifies rates based on a cost-of-service showing.[3]

3. The 1992 Cable Act requires the Commission to reduce regulatory burdens on small systems.[4] Small systems are defined in the statute as systems serving 1,000 or fewer subscribers.[5] Pursuant to that mandate, the Commission's regulatory framework governing regulated cable services incorporates several features designed to reduce administrative burdens on independent small systems and small systems owned by small multiple system operators ("small MSOs").[6] These small systems may elect to make streamlined rate reductions under which they may reduce each billed item of regulated cable service as of March 31, 1994 by 14 percent instead of setting rates based on 17 percent competitive rate reductions from September 30, 1992 levels.[7] This reduces administrative burdens by eliminating the need for these small systems to complete FCC Forms 1200 and 1205, and by eliminating the requirements to unbundle equipment and installation charges from programming service charges, and to set equipment and installation charges at actual cost.[8] The Commission may terminate this administrative relief upon completion of cost studies by the Commission and development of average equipment cost schedules.[9]

4. Independent small systems and small systems owned by any cable operator may also establish unbundled charges for regulated equipment based on the average equipment costs of the small systems. Under this approach, a cable operator of any size generally may average the equipment costs of all its small systems, or only some of them, for purposes of developing unbundled equipment charges for its small systems.[10] Under our interim cost-

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[1] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), 47 U.S.C. § 534 (1992) (hereinafter "the 1992 Cable Act" or "the Cable Act of 1992"). The Cable Act of 1992 amends Title 6 of the Communications Act of 1934, as amended, 47 U.S.C. § 521 et seq. (hereinafter "the Communications Act").

[2] *See Report and Order and Further Notice of Proposed Rulemaking, ("Rate Order")*, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993); *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-389, 8 FCC Rcd 5585 (1993); *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-428, 9 FCC Rcd 1164 (1993); *Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking, ("Second Reconsideration Order")*, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994); *Third Order on Reconsideration, ("Third Reconsideration Order")*, MM Docket Nos. 92-266 and 92-262, FCC 94-40, summarized at 59 Fed. Reg. 17961 (April 15, 1994).

[3] *See* 47 C.F.R. § 76.922(b)(1). Interim rules and policies governing a cost-of-service showing are set forth in the *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 93-215, FCC 94-39, summarized at 59 Fed. Reg. 17975 (April 15, 1994).

[4] Communications Act, § 623(i), as amended, 47 U.S.C. §543(i).

[5] *Id.*

[6] A small MSO is an MSO serving 250,000 or fewer total subscribers that owns only systems with less than 10,000 subscribers each and has an average system size of 1,000 or fewer subscribers. *See* 47 C.F.R. § 76.922(b)(5)(A).

[7] 47 C.F.R. § 76.922(b)(5)(B).

[8] *See Second Reconsideration Order* at paras. 209, 210, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

[9] *See Second Reconsideration Order* at para. 212, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

[10] 47 C.F.R. § 76.923(l). The Commission may alter this cost averaging approach as a result of our cost studies. *See Second Reconsideration Order* at para. 219, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

of-service rules, small systems owned by small MSOs may use simplified forms for purposes of making cost-of-service showings.[11] Small operators, defined as operators serving 15,000 or fewer subscribers and not affiliated with a larger operator, are eligible for transition relief.[12] Instead of setting rates based on a 17 percent competitive reduction, small operators may maintain their March 31, 1994 rates, with certain adjustments as determined under FCC Form 1200.[13]

5. Under the rules adopted in the *Rate Order*, we required cable operators to file a rate justification or cost-of-service showing for the basic service tier and accompanying equipment, and for the cable programming service tier and accompanying equipment, within 30 days of the initial date of regulation.[14] All cable operators are required to have rates and service offerings that comply with our rules on the initial date of regulation.[15] Operators with equipment or programming service charges that exceed permitted levels are subject to refund liability.[16] Refund liability is calculated based on the difference between the old bundled rates charged prior to regulation and the sum of the new unbundled program service charges and new unbundled equipment charges established after the initial date of regulation.[17] Revenue neutral adjustments of equipment and programming rates to achieve unbundled equipment rates will not by itself trigger refund liability.[18] The Small Cable Business Association ("SCBA") has expressed concern about the deadlines by which small operators must achieve this unbundling.[19]

B. Discussion

6. As indicated, the 1992 Cable Act requires the Commission to reduce administrative burdens for small systems. We believe this statutory purpose would be furthered by permitting small operators a brief period of time to restructure and establish rates and service offerings that comply with our rules after a tier becomes regulated, rather than require them to be in compliance with rate rules on the initial date of regulation.[20] This will reduce administrative burdens on small operators by assuring that they will not need to undertake the steps associated with establishing restructured rates and service offerings that comply with our rules, including completion of necessary FCC forms, until they are actually regulated. Moreover, this additional time to comply will not harm cable subscribers because, under transition relief, small operators are not

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[11] *See Report and Order and Further Notice of Proposed Rulemaking* at para. 272 - 279, MM Docket No. 93-215, FCC 94-39, summarized at 59 Fed. Reg. 17975 (April 15, 1994).

[12] *See* 47 C.F.R. § 76.922(b)(4)(A)(i). Low-price systems are also eligible for transition treatment. Low-price systems are those (1) whose March 31, 1994 rate is below their March 31, 1994 benchmark rate or (2) whose March 31, 1994 rate is above their March 31, 1994 benchmark rate, but whose March 31, 1994 full reduction rate is below their March 31, 1994 benchmark rate, as determined under FCC Form 1200. 47 C.F.R. § 76.922(b)(4)(B)5

[13] 47 C.F.R. § 76.922(b)(4)(A)(iii).

[14] *See Rate Order* at para. 116, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993). The *Rate Order* provided that a local franchising authority may take 30 days to review a proposed rate increase before it goes into effect and may extend that period by up to an additional 90 days for a benchmark filing and an additional 150 days in the case of a cost-of-service filing. *Id.* at paras 118-119.

[15] The initial date of regulation of the basic service tier is the date on which a certified local franchising authority notifies the operator that the basic service tier is subject to regulation. 47 C.F.R. Section 76.922(b)(7). The initial date of regulation of the cable programming service ("CPS") tier is the date on which a valid rate complaint is filed with the Commission. *Id.*

[16] 47 C.F.R. §§ 76.942, 76.961.

[17] 47 C.F.R. § 76.942(a). This same analysis applies to unbundled rates charged prior to the initial date of regulation. *Id.*

[18] *Order in the Matter of Emergency Petition for Limited Extension of Refund Liability Deferral Period for Small Systems and Small Operators*, DA 94-592, n.5 (released June 7, 1994); *see also Letter from the Cable Services Bureau to Small Cable Business Association*, DA 94-846 (released August 3, 1994).

[19] *See generally* SCBA's *Emergency Petition for Limited Extension of Refund Liability Deferral Period for Small Systems and Small Operators* (filed May 27, 1994).

[20] We take these actions on reconsideration on our own motion. Petitions for reconsideration in Dockets MM 92-266 and 93-215 addressing other aspects of our rate rules remain pending and will be addressed in subsequent Orders. We take up these issues on our own motion in order to establish additional relief for small systems as required by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. § 543.

In the *Rate Freeze Order*, the Commission stated that it would consider lifting the freeze for a particular cable system if it could demonstrate that the freeze would impose severe economic hardship or threaten the viability of continued cable service. *See Rate Freeze Order*, MM Docket No. 92-266, FCC 93-176, 8 FCC Rcd 2921, 58 Fed. Reg. 17530 (April 5, 1993). The Commission later denied Fidelity Cablevision, Inc.'s request for a waiver of the rate freeze for, among other things, failing to show that foreclosure proceedings had been, or would have been, initiated as a result of the rate freeze. *See Order in the Matter of Fidelity Cablevision, Inc. Petition for Emergency Relief*, FCC 93-445, 9 FCC Rcd 2629 (1993). In a July 28, 1994 letter, Jere W. Glover, Chief Counsel for Advocacy of the Small Business Administration, wrote to Chairman Reed E. Hundt that "[p]roviding assistance at the time of bankruptcy or other type of loan foreclosure is too little assistance too late."

In the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 93-215, the Commission made available hardship rate relief for an operator that concludes that the benchmark/cost-of-service regulations threaten its financial health or ability to provide cable service. *See Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 93-215, FCC 94-39, summarized at 59 Fed. Reg. 17975 (April 15, 1994). Such relief does not require a showing that foreclosure or bankruptcy proceedings have been or would be imminently initiated, and continued cable service need not be in jeopardy. An important factor in assessing any hardship showing will be the operator's ability to meet costs, including costs associated with capital improvement and debt service. We recognize that there are differences among cable operators based on system size, and that small operators may experience greater difficulty in assembling documentation to make a hardship showing. Therefore, we would expect that a small operator could rely on existing data rather than expending resources on obtaining an independent analysis of its financial situation. Furthermore, the Commission recognizes that for those operators facing financial challenges, time is of the essence. The Commission will work as expeditiously as possible to resolve any request for hardship rate relief filed.

required in any event to make competitive rate reductions pending cost studies, but may set rates based on March 31, 1994 levels with some adjustments.[21] And, as indicated, operators will not incur refund liability solely on account of restructuring rates and service offerings to comply with our rules.[22] Accordingly, we conclude that establishing a period of time after regulation begins for small operators to comply will further statutory purposes without injuring consumers.

7. We believe that 90 days after the initial date of regulation is an appropriate period of time for small operators to establish rates and service offerings that comply with our rules. This will afford small operators sufficient time to determine correct rates, complete forms, arrange for billing, and submit forms to regulatory authorities. Accordingly, we will revise our rules to provide that small operators are not required to establish rates and service offerings that comply with our rules for ninety days after the initial date of regulation. In addition, in order to assure that this will reduce administrative burdens, we are changing our rules to provide that small operators do not need to file necessary rate justification forms with the local franchising authority, or the Commission where appropriate, for the basic service tier, or with the Commission for a cable programming service tier, until 60 days after the initial date of regulation. This will provide these operators additional time to complete these forms. However, we are not altering our rules concerning provision of advance notice of rate changes to subscribers. Pursuant to those rules, all operators, including small operators, must give 30 days notice to subscribers prior to implementing rate and service changes.[23]

8. Additionally, small systems and small operators may make their initial basic tier rates, established in accordance with the Commission's revised rate regulations, effective on 30-days notice without prior approval from their local franchising authority.[24] If, upon subsequent examination of a rate justification, a local franchising authority or the Commission finds that a small operator has implemented rates in excess of the maximum permitted rate, refunds may be ordered in accordance with our regulations[25]

III. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Background

9. In 1992, Congress amended § 3(a) of the Small Business Act[26] to require federal agencies to use small business definitions created by the Small Business Administration ("SBA"), or in the alternative, seek public comment on different definitions and obtain the approval of the Small Business Administrator with regard to any regulation applicable to small businesses, unless other statutory definitions are applicable.[27] SBA rules currently define a small cable company as one with $11 million or less in gross revenues.[28] In this rulemaking, the SBA's Office of Advocacy and the SCBA have expressed concern about the Commission's definitions of small operators eligible for transition relief and our definition of small MSOs.[29] Specifically, the SBA's Office of Advocacy and the SCBA believe the current definitions in our rules defining eligibility for transition and administrative relief are underinclusive and were promulgated in violation of § 3(a) of the Small Business Act. They urge us to re-evaluate the definitions and seek public input before deciding on per-

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[21] It is for this reason that we provide the ninety-day grace period only to small operators. Systems owned by small operators are eligible for transition relief and do not have to reduce their March 31, 1994 rates pending Commission cost studies. Other small systems are required to reduce their September, 30, 1992 rates by the competitive differential unless they qualify as low-price systems or qualify for and elect the streamlined rate reduction methodology. This reduction was required to take place by the latter of July 14, 1994 or the initial date of regulation. For regulated small operators, restructured rates must be in place by September 1, 1994. *See Order in the Matter of Emergency Petition for Limited Extension of Refund Liability Deferral Period for Small Systems and Small Operators*, DA 94-592, released June 7, 1994 by the Cable Services Bureau.

[22] This *Order* does not have any effect on any operator's refund liability under our rules.

[23] *See Second Reconsideration Order* at para. 139, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

[24] Small operators would be unable to take advantage of the 90-day compliance period and bring their rates into compliance by the end of the period absent the elimination of the prior approval requirement. The elimination of a prior approval requirement in these circumstances is consistent with previous Cable Services Bureau interpretations. *See Question and Answer No. 4* (released by Cable Service Bureau, July 27, 1994), allowing basic tier rates established on or before July 14, 1994, or September 1, 1994 in the case of small operators, to become effective without prior approval where revised rate regulations required restructuring to be completed before rate justification form was required to be filed.

[25] 47 C.F.R. §§ 76.942, 76.961.

[26] *See Small Business Credit and Business Opportunity Enhancement Act*, Pub. L. No. 102-366, §222, 106 Stat. 986, 999 (1992). The SBA has not yet promulgated regulations to implement this amendment. *See Size Standards; Establishment of Size Standards*, 58 Fed. Reg. 44620 (August 24, 1993) (proposed rule).

[27] 15 U.S.C. 632(a).

[28] 59 Fed. Reg. 16513 (April 7, 1994). This SBA definition became effective after the Commission adopted and released its rules establishing transition relief for small operators. The Commission's *Second Reconsideration Order* was adopted February 22, 1994 and released March 30, 1994. The SBA's revised definitions were adopted April 7, 1994 and became effective April 22, 1994. The Commission's rules were published in the Federal Register on April 15, 1994 and became effective May 15, 1994. Previously, the SBA defined a small cable company as one with $7.5 million or less in gross revenues. 13 C.F.R. 121.601 (1993).

[29] *See Reply Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Further Notice of Proposed Rulemaking* in MM Docket No. 93-215, submitted July 28, 1994; SCBA *Reply Comments to the Fifth Notice of Proposed Rulemaking* in MM Docket No. 92-266, submitted July 27, 1994.

manent standards.[30] SCBA also has filedan intervenors' brief in a lawsuit challenging the Commission's cable rate regulations.[31]

B. Discussion

10. As indicated, in the *Second Reconsideration Order*,[32] we established transition treatment for small operators pending completion of our cost studies, and have established administrative relief for independent small systems and small systems owned by small MSOs. Under our interim cost-of-service rules, independent small systems and small systems owned by small MSOs also may use special forms for cost-of-service showings. When cost studies are completed, we may make permanent, eliminate, or modify our transition rate treatment of small operators. When we develop average equipment cost schedules, we may terminate or modify our provisions for streamlined rate reductions for independent small systems and small systems owned by small MSOs. In our final cost proceeding, we may modify our requirements for cost showings by independent small systems and small systems owned by small MSOs.

11. We believe that it would establish a more complete record for purposes of promulgating final rate rules applicable to small operators, independent small systems, and small systems owned by small MSOs if we obtain comment on possible alternative definitions that we could use for purposes of determining eligibility for special rate or administrative treatment provisions that could apply to small businesses. We are initiating the instant *Further Notice of Proposed Rulemaking* for purposes of obtaining this comment.

12. Accordingly, we solicit comment on whether we should retain current definitions or use different definitions for purposes of establishing special rate or administrative treatment for small operators and small MSOs that could be small businesses. We specifically seek comment on these issues in light of Section 3(a) of the Small Business Act, and on whether we should employ the current SBA definition of a small cable company in our cable rules.

IV. REGULATORY FLEXIBILITY ANALYSIS

A. Final Regulatory Flexibility Analysis for the Fifth Order on Reconsideration

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601-12, the Commission's final analysis with respect to the *Fifth Order on Reconsideration* is as follows:

14. Need and purpose of this action: The Commission, in compliance with section 3(i) of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers of reasonable rates for cable services with minimum regulatory and administrative burden on cable entities.

15. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration filed comments in the original rulemaking order ("SBA"). The Commission addressed the concerns raised by the SBA in the *Rate Order*.[33] The SBA filed reply comments in MM Docket No. 93-215 and the SCBA filed reply comments in MM Docket No. 92-266. Those comments will be reviewed as part of the instant *Further Notice of Proposed Rulemaking*.

16. Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. The Commission responded to these comments in previous *Orders* in these dockets. Although the Commission is issuing this *Fifth Order on Reconsideration* on its own motion, the Commission has attempted to accommodate commenters' concerns and to reduce administrative burdens by providing an additional period of time for small cable operators to comply with the rate regulations.

B. Initial Regulatory Flexibility Analysis for the Further Notice of Proposed Rulemaking.

17. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected im-

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[30] The Chief Counsel of the SBA's Office of Advocacy has urged the Commission to explore a full range of burden-reducing regulatory options in our rate proceedings. *See* footnote 20, *supra*. We are in full agreement with that suggestion. Based on the existing record, however, we are not persuaded that the actions taken to date to ease the regulatory difficulties faced by smaller operators have been undertaken in violation of the law. Specifically, the Commission does not believe that Small Business Administration size standards, to which federal agencies may be required to adhere under Section 3 of the Small Business Act, are applicable to the Commission's definitions of small cable operators and small cable systems developed in the *Second Reconsideration Order*. For example, Section 3(a) of the Small Business Act provides that SBA size standards apply for the purposes of all legislation, unless the legislation specifically authorizes different size standards. The 1992 Cable Act in fact contains a size definition of a small system as one with 1,000 or fewer subscribers. *See* 47 U.S.C. § 543(i). Specifically, the statute requires the Commission to develop cable rate regulations that reduce cost and administrative burdens for such "small systems." Given the statute's small system definition of 1,000 or fewer subscribers, Section 3(a) of the Small Business Act is inapplicable. The Commission has implemented the statutory provision regarding small system relief in a more flexible manner than is explicitly mandated by the Cable Act and is now considering further flexibility through extending relief to additional systems. But this does not alter the fact that the Commission is implementing a statute with an explicit small business size standard. Additionally, the Small Business Act defines small-business concerns as one "which is not dominant in its field of operation." 15 U.S.C. § 632(a)(1). Cable systems subject to rate regulation, regardless of whether they are large or small, are by definition dominant in their field of operation because they do not face effective competition. Thus, Section 3(a) of the Small Business Act also does not apply because regulated cable systems do not meet the definition of a small business concern.

[31] *See Brief of Intervenor Small Cable Business Association* in *Time Warner Entertainment Co., L.P., et al. vs. Federal Communications Commission and United States of America*, No. 93-1723, (D.C. Cir.).

[32] *See Second Reconsideration Order*, MM Docket No. 92-266, FCC 94-38, summarized at 59 Fed. Reg. 17943 (April 15, 1994).

[33] *See Rate Order*, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (1993).

pact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

18. Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rates of cable systems subject to effective competition, as defined in the Cable Act of 1992 and represented in the revised benchmark formula. This Notice proposes to review and determine appropriate definitions of small systems, small operators, and small MSOs for the purpose of determining rate regulation applicable to these categories of companies.

19. Objectives. To propose rules to implement Section 3 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

20. Legal Basis. Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

21. Description, potential impact and number of small entities affected. We anticipate a possible impact on small entities because the Notice addresses the definitions of small systems, small operators and small MSOs for use in determining rate rules affecting these classes of cable operators.

22. Reporting, record keeping and other compliance requirements. None.

23. Federal rules which overlap, duplicate or conflict with this rule. None.

24. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. None.

V. PAPERWORK REDUCTION ACT

25. The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public.

VI. PROCECDURAL PROVISIONS

26. Ex parte Rules - Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

27. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **November 16, 1994** and reply comments on or before **December 16, 1994**. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

VII. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 303 (r), 612, and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 532, and 543 the rules, requirements and policies discussed in this Order on Reconsideration and Further Notice of Proposed Rulemaking, ARE ADOPTED and Section 76.934 of the Commission's rules, 47 C.F.R. Section 76.934, IS AMENDED as set forth in Appendix A.

29. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, 47 U.S.C. §§ 154 (i), 154 (j), 303(r), 532 (c), 542(c), and 543, NOTICE IS HEREBY GIVEN of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this *Further Notice of Proposed Rulemaking*, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

30. IT IS FURTHER ORDERED that, the Secretary shall send a copy of this *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

31. IT IS FURTHER ORDERED that, the requirements and regulations established in this decision shall become effective thirty (30) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76 - CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.934 is retitled Small Systems and Small Operators and is amended to add section (e):

§ 76.934 Small Systems and Small Operators

* * * * *

(e) *Systems owned by Small Operators.* Systems owned by small operators as defined in Section 76.922(b)(4)(A) shall have 90 days from their initial date of regulation on a tier to bring their rates for that tier into compliance with the requirements of Sections 76.922 and 76.923. Such systems shall have sixty days from the initial date of regulation to file FCC Forms 1200, 1205, 1210, 1211 1215, 1220 and/1225 and any similar forms as appropriate. Rates established during the 90-days period shall not be subject to prior approval by franchising authorities or the Commission, but shall be subject to refund pursuant to sections 76.942 and 76.961 of these rules.

FCC 94-140

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 9 of the Communications Act	)	MD Docket No. 94-19
	)	
Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year	)	

REPORT AND ORDER

Adopted: June 3, 1994; Released: June 8, 1944

By the Commission: Commissioner Quello issuing a statement; Commissioners Ness and Chong not participating.

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I. Introduction

1. By this Report and Order, the Commission adopts rules to implement section 9 of the Communications Act, as amended, 47 U.S.C. § 159, providing for the annual assessment and collection of regulatory fees by the Commission.[1] The Report and Order establishes the amounts of the regulatory fees for Fiscal Year (FY) 1994 and the rules for the payment of such fees for fiscal years 1994 and thereafter.[2] Also, we are amending several of the rules governing the collection of the fees to be filed with applications and other filings pursuant to section 8 of the

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[1] Section 9 of the Act was added by section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (hereinafter "1993 Budget Act"). See Pub. L. No.103-66, Title VI, § 6002(a), 107 Stat. 397 (approved August 10, 1993). Section 9 is codified at 47 U.S.C. § 159.

[2] As discussed below, we will establish the accounting systems necessary to make adjustments in the Schedule of Regulatory Fees required for the assessment of fees in future years in a subsequent and separate rulemaking proceeding. See 47 U.S.C. § 159(b)(3), (i).

Communications Act, as amended, 47 U.S.C. § 158.[3]

2. The rules we adopt below are designed to ensure that 1) collection of fees does not adversely affect the Commission's regulatory activities, 2) the most effective means possible are employed in the collection and deposit of fees, and 3) the paperwork (and financial burden) on the public resulting from our collection process is kept to an absolute minimum. To accomplish this goal, we have, to the extent possible, modeled our regulatory fee rules upon the rules that we previously established to govern the collection of fees filed with applications and other filings. See 47 C.F.R. § 1.1101 et seq. Moreover, in the course of fashioning rules to govern regulatory fees, we have revised several rules in order to improve the collection process related to these fees and, wherever possible, to ease the burden on those entities subject to the payment of these fees. Implementation of rules governing the collection of regulatory fees also furthers the National Performance Review goals of reinventing government by requiring beneficiaries of the Commission's services to pay the costs associated with these activities.

II. Background

3. Section 9(a) of the Communications Act requires the Commission to collect regulatory fees to recover the annual cost of its enforcement activities, policy and rulemaking activities, user information services, and international activities. 47 U.S.C. § 159(a). 47 U.S.C. § 159(b)(1)(A). The Schedule of Regulatory Charges sets forth in section 9(g) the categories of regulated entities subject initially to the regulatory fee requirement and designates the fees to be collected for each subject category of regulatee. 47 U.S.C. § 159(g). The Schedule of Fees sets forth annual regulatory fees for specific categories of regulatees in Private Radio, Mass Media, Common Carrier and

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[3] 47 U.S.C. § 158. See generally 47 C.F.R. Part 1, Subpart G; Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 2 FCC Rcd 947 (1987) (hereinafter "Fees 1"), recon. granted in part, 3 FCC Rcd 5987 (1988) (hereinafter "Fees 1 Reconsideration"); Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, 5 FCC Rcd 3558 (1990) (hereinafter "Fees II"), recon. granted in part, 6 FCC Rcd 5919 (1991) (hereinafter "Fees II Reconsideration"). See also section 6003(a)(2) of the 1993 Budget Act, Pub. L. 103-66, Title VI, § 6003(a)(2), 107 Stat. 401 (1993) (making conforming amendments to section 8).

Cable Services.[4]

4. Section 9(f)(1) requires the Commission to adopt rules to implement the assessment and collection of the annual regulatory fees. 47 U.S.C. § 159(f)(1). On March 4, 1994, we adopted a Notice of Proposed Rulemaking ("NPRM") to implement section 9 of the Act.[5] In the NPRM, we concluded that Congress intended the Commission to rely upon the Schedule of Regulatory Fees enacted in section 9(g) to recover costs for FY 1994.

5. In addition, the NPRM proposed rules providing for: 1) exemptions from the regulatory fee requirements for governmental entities, nonprofit entities, amateur licensees, noncommercial educational broadcasters, and licensees in the public safety services, 2) standards for waiver, reduction and deferment of regulatory fees, 3) procedures for the payment of regulatory fees, including the timing and method of payments, and the location for submission of payments, and 4) procedures to assure timely payment of regulatory fees, including announcements in the Federal Register of the filing times for the fee payments, and penalties for late payment and nonpayment of fees.

III. Discussion

A. Assessment of Regulatory Fees for FY 1994

6. The NPRM proposed that for FY 1994, the Commission would utilize the Schedule of Regulatory Fees established by Congress in section 9(g) of the Act. 47 U.S.C. § 159(g). In response to this proposal, several commenters suggest that we amend the Schedule of Fees for FY 1994. They contend that fees in the Schedule are too high, that the schedule provides the wrong mechanism for assessing fees, and that additional services should be included in the fee schedule.

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[4] Congress included the regulatory fees for cable services in the Schedule of Regulatory Fees as a subpart of the fees established to recover appropriations related to the regulation of mass media services. 47 U.S.C. § 159(g). Because we recently established a Cable Services Bureau to administer the regulation of cable television operations, we have amended our rules to set forth separately the regulatory fees applicable to cable services. See section 1.1155, 47 C.F.R. § 1.1155.

[5] See Notice of Proposed Rulemaking in the Implementation of Section 9 of the Communication Act, FCC 94-46, released March 11, 1994.

7. In particular, Fireweed Communications Corp.[6] (Fireweed) argues that the regulatory fees impose an unfair and confiscatory financial burden on broadcast stations in small markets, and impinge on the constitutional right of freedom of speech of Fireweed and its listeners. Fireweed contends that the financial burden imposed by the regulatory fee would cause it to reduce its programming or even to cease its operations. The Joint Commenters, consisting of several cable television interests,[7] argue that we have authority to modify the Fee Schedule for FY 1994, to add classes of services that Congress did not include in section 9(g)'s fee schedule. In addition, the Joint Commenters assert that the Commission is authorized to modify the fee schedule for FY 1994 because section 9(b)(3), which governs permissive adjustments to the fee schedule, including addition of services to the schedule, does not restrict our authority for making changes to fiscal years after 1994. In particular, the Joint Commenters contend that Direct Broadcast Satellite, if available later this fiscal year, Instructional Television Fixed Service, if used for commercial purposes, and Multi-channel Multipoint Distribution Services, because it is not expressly enumerated as a service subject to the fee requirement, should be added to the fee schedule and assessed a fee for FY 1994. The Joint Commenters also assert that adopting a fee requirement for these services in this proceeding will avoid the necessity for immediately initiating a new rulemaking to include these services

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[6] Fireweed filed its comments late. It argues that the Commission failed to provide proper notice to interested parties and asserts that we failed to publish the NPRM "in publications likely to be obtained by small entities" or to "conduct open conferences and public meetings" concerning our proposals as provided in 5 U.S.C. § 609(2) and (4). However, section 609 requires only that we "assure that small entities have been given an opportunity to participate in the rulemaking" through means "such as" those enumerated in section 609. 5 U.S.C. § 609. We have met that requirement. The NPRM was published and distributed pursuant to section 1.412 of our rules and was distributed to over 100 members of the trade press, newspapers, wire services, broadcasters, and magazines, including those dealing with consumer, minority and small business issues. In addition, the Commission's Daily Digest, which included notice of the NPRM, was published on Internet. We will also accept and give full consideration to the arguments in Fireweed's comments even though they were untimely filed. Further, we will accept the late filed comments of MCI Telecommunications Corporation.

[7] The Joint Commenters are Blade Communications, Inc., Cablevision Industries Corp., Crown Media, Inc., Multivision Cable TV Corp., Parcable, Inc., Providence Journal Company, Sammons Communications, Inc., and Star Cable Associates.

in the fee schedule for FY 1995 and thereafter.

8. Other parties including Sprint, the Cellular Telephone Industry Association (CTIA), Comsat, and the Utilities Telecommunications Counsel (UTC), support our conclusion in the NPRM that Congress intended that the Schedule set forth in section 9(g) would govern the assessment and collection of fees for FY 1994. UTC states that Congress' inclusion in section 9(g) of the fee schedule, as well as other language in the Act, clearly demonstrates that Congress did not intend that the Commission revise the fee schedule so soon after its enactment.

9. We are not persuaded by the arguments urging a reduction in the statutory fees or amendment of the service categories subject to the regulatory fees. In the NPRM, we concluded that Congress did not intend that we change the amounts or the services established by the statutory fee schedule for 1994. Our conclusion is supported by the Conference Report, which states that we have authority to review and adjust the fees after one year.[8] Congress also enacted the fee schedule after reviewing information that we provided concerning the services subject to the fees. We do not believe that Congress would have enacted section 9(g) intending that we immediately amend the service classifications or fee amounts in its schedule.

10. In addition, other provisions of section 9 support our interpretation. Section 9(i) requires that, before making adjustments to the services included in the fee schedule, we must develop accounting systems and provide an opportunity for public comments on proposed cost allocations. NPRM para. 9. Section 9(b)(4)(B) requires that any amendment to the services contained in the statutory fee schedule not be effective until 90 days after Congress is notified of those revisions. See 47 U.S.C. § 159. As a practical matter, the Commission could not possibly meet these requirements in time to permit section 9 fee collections in FY 1994. Given these statutory requirements, we conclude that Congress did not intend that we make any changes to the services subjected to the regulatory fee requirement or the amounts contained in the schedule for FY 94.[9]

11. Also, we do not agree with the Joint Commenters that this is the appropriate proceeding to amend the Schedule of Fees for

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[8] H.R. Rep. No. 213, 103 Cong., 1st Sess. 499 (1993) (Conference Report).

[9] In view of our conclusion that Congress did not intend us to make any changes to its Schedule of Fees for FY 1994, we will not at this time assess fees on lifetime restricted radiotelephone and radio operator applicants and permittees.

future years. Such amendments would be premature because we do not now have the information necessary to establish regulatory fees for FY 1995. As we stated in the NPRM, we intend to commence a separate proceeding in connection with the assessment of fees for FY 1995. We will seek in that proceeding comment concerning the allocation of costs of our enforcement, policy and rulemaking, information services, and international services, including any necessary adjustments to the classes of services set forth in section 9(g)'s fee schedule. See 47 U.S.C. ¶ 159(i).

12. Therefore, as we proposed in the NPRM, in order to meet the congressional directive to implement the collection of regulatory fees in Fiscal Year 1994, we are adopting without modification the Schedule of Regulatory Fees enacted by Congress in section 9(g). See 47 U.S.C. § 159(b)(1)(C). The Schedule provides a listing of the specific categories of regulatees in the Private Radio, Mass Media, Common Carrier and Cable Services that are required to pay a regulatory fee. We have incorporated the schedule into our rules and we have established separate sections of the rules to provide the payment schedules for the Private Radio Services (section 1.1152), Mass Media Services (section 1.1153), Common Carrier Services (1.1154) and Cable Services (section 1.1155). In Appendix B of this Report and Order, we have included guidelines for the payment of fees for each service subject to the regulatory fee requirement.

B. Exemptions from Regulatory Fees

13. In the NPRM, we proposed to exempt certain discrete categories of regulatees from the requirement to file annual regulatory fees. Section 9(h) explicitly provides an exemption from the fees for governmental entities, nonprofit entities and amateur radio licensees. 47 U.S.C. § 159(h). We concluded that Congress also intended to exempt all public safety licensees and noncommercial educational broadcasters from the regulatory fee requirements. In the paragraphs below, we review each of these categories and consider the comments that address each exemption.

1. Governmental Entities

14. As provided in section 9(h) and proposed in the NPRM, governmental entities will be exempt from the regulatory fee requirement. As proposed, our rule implementing the governmental exemption will conform to existing section 1.1112(f) of the rules, which provides an exemption for governmental entities from the fee requirements for applications and other filing fees. See 47 C.F.R. § 1.1112(f); see also 47 U.S.C. § 158(d)(1)(A),(B). Section 1.1112(f) broadly defines the term "governmental entity" to include "any state, possession, city, county, town, village, municipal corporation or similar political organization or

subpart controlled by publicly elected officials exercising sovereign direction and control over their respective communities or programs." The comments generally support our proposals with regard to the exemption for governmental entities.

15. Cellular Communications of Puerto Rico (CCPR) contends that we should limit the government exemption so that only usual and customary governmental functions would be exempt. In particular, CCPR argues that the Puerto Rico Telephone Company (PRTC) which is controlled by the Commonwealth of Puerto Rico and operates a cellular telephone system, should be required to pay a regulatory fee to the extent that it engages in for profit or competitive operations. Further, CCPR argues that exempting PRTC from the regulatory fees for cellular telephone systems would give PRTC an unfair competitive advantage. In opposition, PRTC argues that Congress did not distinguish between different activities, and that as a result all of its operations are subject to the governmental exemption.

16. The governmental exemption is mandated by Congress. Congress did not distinguish between various governmental functions, nor did it restrict the exemption's availability for any specific governmental entities. Therefore, we do not accept CCPR's proposal.

2. Nonprofit Entities

17. Section 9(h) also exempts nonprofit entities from the requirement to file regulatory fees. In the NPRM, we tentatively found that Congress intended its exemption for nonprofit entities to cover any entity possessing nonprofit, tax exempt status pursuant to section 501 of the Internal Revenue Code, 26 U.S.C. § 501. Congress' exemption of nonprofit entities from regulatory fees is substantially broader than the limited exemption from the payment of application filing fees that Congress afforded in section 8(d)(1) to nonprofit entities licensed in the Public Safety Radio Services and tax exempt under section 501(c)(3). See 47 U.S.C. § 158(d)(1); see also 47 C.F.R. § 1.1112(b). The comments generally support our interpretation of the exemption, and we will adopt the exemption as proposed in the NPRM. The nonprofit exemption will be available only to those licensees who have established their nonprofit status under section 501.

3. Amateur Licensees

18. Pursuant to section 9(h), we proposed to establish an exemption from regulatory fees for amateur radio operators licensed under part 97 of our rules. However, Congress included in the Schedule of Fees an annual regulatory fee covering vanity call signs, and we proposed to establish a fee for amateur vanity call signs. We proposed that this fee would be assessed if our proposed rules to establish vanity call signs become effective.

See Notice of Proposed Rulemaking, 9 FCC Rd 105 (1993).

19. We will adopt the exemption for amateur licensees as set forth in NPRM. If our proposal to issue vanity calls signs is adopted, we will also assess a regulatory fee in FY 1994 upon persons filing applications, pursuant to the charges listed in Congress' fee schedule.[10]

4. Noncommercial Educational Broadcasters

20. In the NPRM, we concluded that regulatory fees are not applicable to noncommercial educational broadcasters. Congress included commercial television and AM and FM radio broadcast licensees and permittees in its Schedule of Fees. In contrast, Congress omitted the noncommercial educational stations from the category of stations subject to the regulatory fee. In addition, and consistent with existing section 1.1112(d) of the rules governing application fees, we proposed to exempt from the regulatory fee requirement any secondary and auxiliary broadcast services, such as low power television ("LPTV") stations, television translators and boosters, remote pickup stations and intercity relay stations and other Mass Media, Common Carrier, and Private Radio facility authorizations used with noncommercial radio, television and instructional services qualifying for the exemption. See 47 C.F.R. § 1.1112(d). The comments supported the exemption for nonprofit educational broadcast stations and we will adopt the exemption as set forth in the NPRM.

21. Further, we affirm the tentative conclusion of the NPRM that noncommercial international short-wave will be subject to the regulatory fees. Congress did not provide an express exemption for these stations and none of the commenters urged us to exempt the international short-wave stations. In addition, unlike noncommercial LPTV and translator stations, the government does not provide financial support to noncommercial international short wave stations through the Corporation for Public Broadcasting (CPB) or the National Telecommunications and Information Administration (NTIA). Thus, the considerations that led us to conclude that Congress intended to exempt noncommercial educational LPTV and translator stations are not present with respect to international short-wave stations. See Fee Collection Program, 6 FCC Rcd 5919, 5925 (1991).

5. Public Safety Services

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[10] The American Radio Relay League, Incorporated asserts that it has requested Congress to change the vanity call sign annual regulatory fee to a one time application fee. We, of course, will modify our fee schedule to be consistent with any congressional amendment of the fees.

22. We have received no comments opposing our proposal to exempt all licensees in the Special Emergency Radio and Public Safety Radio services from regulatory fees even where the licensee does not qualify for an exemption as a governmental or nonprofit entity. In the NPRM, we noted that the legislative history states that Congress intended to exempt public safety licensees from regulatory fees. APCO, in supporting our proposal, urges that we limit the public safety exemption to entities eligible for Public Safety Radio Service licenses pursuant to the provisions of Part 90, Subpart B, and not exempt licensees merely because they are authorized to operate on a public safety channel. We agree with APCO that only entities eligible to operate as public safety licensees should be entitled to an exemption. Therefore, we will restrict the public safety exemption to entities eligible to operate in the Special Emergency Radio or Public Safety Radio Services.[11] Under this definition, the fact that a licensee is authorized to use a frequency allocated to these services is insufficient to gain an exemption as a public safety entity.

6. Certification of Exempt Status

23. In order to implement our congressional mandate concerning exemptions, the NPRM asked the parties to comment on the appropriate method for establishing exemptions from regulatory fees. Our goal is to minimize the burden on applicants and licensees seeking exemption from the regulatory fees. See NPRM at ¶¶ 13, 16, and 21. The commenters supported our efforts and urged reporting and exemption certifications designed to minimize their paperwork burdens.

24. Forest Industries Telecommunications (FIT) proposed that the Commission allow nonprofit entities to establish their exempt status by submitting a Determination Letter issued by the Internal Revenue Service (IRS) stating that the applicant has qualified for tax exempt status under Section 501 of the Internal Revenue Act. The Utilities Telecommunications Council (UTC) urges that we reduce the burden on entities seeking to obtain a nonprofit exemption by requiring only that they file their employer identification numbers (EINs). UCC asserts that EINs are sufficient to permit verification of an entity's nonprofit status. The National Telephone Cooperative Association (NTCA) urges that we also exempt entities that have applied for IRS Determination Letters so that IRS administrative delays do not

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[11] Moreover, we will not assess a regulatory fee upon Emergency Broadcast Service (EBS) licenses for auxiliary service facilities that use government-provided equipment because these stations are dedicated for EBS and are used solely for public safety purposes.

result in the denial of exemption from the regulatory fee requirement. NTCA requests that our determination of nonprofit status remain effective until a change in such status is determined by the IRS.

25. PRTC urges us to rely upon existing exemptions from application fee payments held by governmental entities rather than require these entities to provide additional certifications to obtain exemptions from the regulatory fee requirement. Similarly, UCC contends that no additional certification of exempt status should be required from governmental applicants in the Private Radio services since applications for these services require information disclosing their exempt status.

26. We agree with PRTC and UCC that we can rely on the data in private radio service applications and in the Commission's files to determine a regulatee's exempt status. Further, licensees and other regulatees for whom we have such data will not be required to file documentation to support their exempt status. If, after reviewing the information already on file, we are unable to determine a regulatee's exempt status we will issue a request that an applicant or licensee further document its claim of exempt status. With respect to amateur, noncommercial educational broadcast stations and public safety licensees, we do not anticipate any problem in establishing their eligibility for exempt status because their exempt status is based on the nature of their licenses.

27. When our records contain no evidence of a governmental entity's exempt status, we will accept a certification of its governmental status. Nonprofit licensees may submit section 501 Determination Letters. Because these documents are readily available in the files of nonprofit entities, we decline at this time to establish a mechanism to verify nonprofit status through EINs. We will also require that an entity with a pending request for an IRS Determination Letter submit a regulatory fee because the IRS may deny the request for tax exempt status. However, we will refund the fee for the period covered by a subsequently issued Determination Letter.[12]

28. We caution that we expect regulatees to act in good faith.

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[12]To obtain a refund a regulatee must demonstrate that the period covered by the Determination Letter's finding of tax exempt status includes the date that we established for the calculation of its fee in the fiscal year for which the refund is requested. Further, an entity will be subject to a regulatory fee for the fiscal year that the IRS terminates its tax exempt status if the termination is made prior to the date for calculating its fees.

In any instance in which payment is overdue, and the licensee or permittee cannot establish its entitlement to an exemption, we will assess a 25 percent penalty for late payment as authorized by Congress.

C. Waivers, Reductions and Deferments of Regulatory Fees

29. Section 9(d) provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 159(d). Section 9(d) is similar to, if not identical with section 8(d)(2) of the Act related to waivers and deferments of application fees. 47 U.S.C. § 158(d)(2). Pursuant to section 8(d)(2), we have permitted waivers only on a case-by-case basis following a demonstration that the public interest clearly overrides the private interest of the requester. Thus, in our NPRM, we proposed to restrict similarly waivers to encompass only those requests unambiguously articulating "extraordinary and compelling circumstances" outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee.

30. For those entities required to file regulatory fees with their applications, such as licensees in the private radio service, we proposed procedures for filing waiver, deferral and reduction requests similar to those we have fashioned for application fee waiver requests. See 47 C.F.R. 1.1115(e). Persons seeking waiver or reduction of a regulatory fee would submit the required fees and forms along with their requests for waiver or reduction. We noted that this procedure assures efficient collection of necessary fees and avoids the possible imposition of a late fee in the event that the licensee's request for waiver or reduction is denied. In the case of standard regulatory fees, we further proposed that the required fee accompany any request for waiver or reduction. In either case, we proposed to return or modify the tendered fee upon grant of the waiver or reduction request. Finally, we proposed that a request for deferred payment of the required fee should be submitted 60 days in advance of the date established for the payment of the fee in order to permit review and action prior to the fee's due date.

31. Several state broadcasting associations (State Broadcasters) in their joint comments, suggest that the public interest would be served by granting permanent or temporary waivers or reduction or deferment of fees to Mass Media licensees who can demonstrate that payment of the fees would impair their service to the public. The State Broadcasters contend that our authority to waive, reduce or defer fee payments in such cases is clear if a showing is made that payment of the fee could result in degradation of service to the public, citing NBC v. United States, 319 U.S. 190 (1943); FCC v. Sanders Bros. Radio Station,

309 U.S. 470 (1940). In order to demonstrate financial hardship, the State Broadcasters urge that they be allowed to submit any relevant evidence, including tax records, unaudited balance sheets or any other financial statements. Further, the State Broadcasters argue that the fee should be automatically waived if a Mass Media licensee is in bankruptcy, receivership or trusteeship because this status is a clear signal of financial hardship.

32. The Broadcasters, joined by the National Association of Broadcasters (NAB), contend further that the requirement to file the regulatory fee payment with a request for waiver is irrational where the basis for the waiver request is the financial hardship of the licensee. Further, the NAB states that it will be impossible to dispose of waiver requests before the fee payments are due for FY 1994 because of the short period between the completion of this proceeding and the date for submission of fees. Moreover, the NAB stresses that Congress contemplated that there would be situations where the financial burden imposed by the fee requirement would be so onerous that payment should be waived. According to the NAB, if Congress' purpose in providing for waiver, reduction or deferment is to have any practical effect, according to NAB, we should not require applicants requesting waivers for financial hardship to suffer additional financial burden that they cannot afford.

33. We are not persuaded that we should modify our proposal to generally require the filing of the regulatory fee with each waiver or reduction request. Rather, we continue to believe that our current procedure will help ensure efficient collections.

34. Nevertheless, we recognize that there may be exceptional instances in which requiring payment of the regulatory fee along with a waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee or other regulatee. In those instances, the licensee should submit, together with its waiver request, a petition to defer payment until the waiver request is resolved. In order to reduce the burden on regulatees, we will accept petitions for waiver, reduction and deferment so long as they are filed no later than by the date payment is due. The filing of the deferment request will toll the requirement to pay the regulatory fee until disposition of the deferment request.[13]

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[13] We deny NABER's request that we modify the fee that Congress required for filing a petition for waiver of a private radio service rule. Section 8 of the Communications Act empowers us only to adjust fees for applications and other filings based upon changes in the Consumer Price Index.

35. Petitioners seeking a waiver, deferral or reduction of a regulatory fee based upon financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon the information submitted and any additional information available in our records. If a petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will then have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.

D. Procedures for Payment of Regulatory Fees

1. Categories of Payors

36. Pursuant to section 9(f), we proposed to establish three classes of regulatory fee payments, standard, small and large, based upon the size of the payment required by the Schedule. The time for submitting the fee would be determined by the class of fee payment. Persons making "large" fee payments for Fiscal Year 1994 would be eligible to complete their fee payment in two installments. Moreover, we stated that consideration would be given to allowing four installment payments for Fiscal Year 1995 and thereafter. We proposed, however, that small fee payments, be remitted when an application for a license of a facility subject to the fee is filed and the payment amount is the fee due for the entire term of the license or other authorization. We proposed that regulatees subject to a standard fee are to submit the fee in a single, annual payment. The specific date for the payment of a standard fee would be announced by public notice and published in the Federal Register well before the payment's due date.[14]

37. Brown and Schwaninger (B&S) states that Congress intended to establish only two, not three, categories of regulatory fees -

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[14] GTE has urged that we allow licensees that transfer or assign licenses during FY 1994 to pro-rate their fee payments for the subject licenses on the basis of the amount of time the license was held by each party. The law authorizing section 9 was enacted in August 1993 and we believe that the negotiation between the parties to a transfer or assignment that occurred this fiscal year would ordinarily have included consideration of expenses related to the payment of regulatory fees. The party holding the license on the date the fees are due will be the party responsible for its payment.

large fees and small fees - because section 9(f) enumerates only two such categories of fee payments. B&S contends that Congress would have included in section 9 explicit authority to establish a third category if it had intended to provide such authority. In the absence of any language in section 9 indicative of a third category, B&S contend that we are precluded from adopting a standard fee category and collecting standard fees. Instead, B&S reasons that our authority under section 9 is limited to determining that a particular fee is either large, and establishing an installment plan, or the fee is small and collecting it in advance for a number of years not to exceed the term of the license.

38. We reject B&S's interpretation of section 9(f). In section 9(a), the general authority provision, Congress broadly empowered us "to assess and collect regulatory fees...." Subsection 9(f) requires only that our rules include specific provisions providing for advance payments in the case of small fees and installment payments for larger ones. Nothing in that section, or in logic, compels a conclusion that every fee must necessarily fall within a category of either "large" or "small." Section 9(f) is simply silent regarding any other substantive aspect of our fee collection system, including whether other categories of fee payments may be established. Moreover, our conclusion that some regulatees are subject to payment of neither large nor small fees and, consequently, are only subject to a single annual regulatory "standard" fee payment, in no way conflicts with Congress' directive to include specific consideration of those payors of large and small fees. Therefore, we adopt our proposal to establish three categories of regulatory fees.

2. Installment Payments for Large Fees

39. In the NPRM, we proposed that some fees would be classified as "large" fees and, therefore, eligible for payment by installment. For FY 1994, we identified the following fee amounts in the specified categories as eligible for payment on the installment plan.

Regulatory Fee Category	Large Fee
VHF and UHF Commercial Television Station	above $12,000
Cable Television System	above $18,500
Inter-Exchange Carrier	above $500,000
Local Exchange Carrier	above $700,000

40. Several parties urge that we expand significantly our proposed installment payment eligibility standards. GTE and Sprint request that we establish an installment fee benchmark of $250,000 for all classes of services that are not allowed to make installment payments under our proposal. The Broadcasting

Associations argues that all mass media licensees should be eligible for installment payments and the New Jersey Broadcasting Association (New Jersey Association) argues that all radio broadcasting licensees, or in the alternative, licensees encountering financial hardship should be permitted to make installment payments. GE American Communications, Inc. contends that licensees of satellite space stations should be afforded installment payment eligibility.

41. For FY 1994, we intend to permit installment payments by a reasonable number of regulatees whose fees greatly exceed the average fee in a particular service category. Through this means we can ensure that we are able to structure a fee collection system that can be fairly and efficiently administered, given our available resources and our relative inexperience with the regulatory fee program and its installment component.[15]

42. Since little time is left in which to collect fees for FY 1994, the practical impact of permitting licensees to make installment payments this year should be minimal in any event. In these circumstances, we thus find it both fair and prudent to decline to expand significantly installment payment eligibility for FY 1994. Also, we decline to permit installment payments for radio licensees, since no fee greater than $900.00 is imposed on these licensees.

43. As we gain experience with the regulatory fee program and, in particular, with its installment payment component, we will consider increasing eligibility to make installment payments. Therefore, with a limited exception, we will adopt our proposed installment fee standards. As discussed above, if a licensee concludes that payment of a fee in its entirety would constitute a financial hardship or if it cannot otherwise submit a full payment, the licensee may submit a partial payment of the fee with a petition to defer payment of the remaining portion of the fee. Interested parties may renew their arguments for increased installment opportunities in their comments concerning the assessment and collection of regulatory fees for 1995.

44. Notwithstanding our decision not to expand significantly installment payment eligibility this year, we have decided to permit space station and system licensees to submit their fees in installments. These licensees are relatively few in number, and the uniform fee structure for this service does not lend itself to the mechanism we used to establish installment payments in

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[15] Because our fee collection program is not yet capable of accounting for installment payments aggregated on other than a single service basis, regulatees must pay their fee payments on a service by service basis.

categories of services with progressive fee structures. Thus, we will permit licensees of geosynchronous satellite space stations and low earth orbit satellite systems to file their fee payments in installments.

45. As proposed, regulatees qualifying for installment payments for FY 1994 may make their fee payments in two separate and equally divided payments with the first payment due on the date set for paying standard annual fees. The date for each installment will be announced by Public Notice and in the Federal Register. For future fiscal years, we plan to permit four installments annually. We have decided not to impose an administrative fee with each installment payment. However, any late filed installment payment will be subject to a 25 percent late fee and the payment of interest for the delinquent amount. Further, any regulatee paying its fees by installment will automatically lose its eligibility to pay by installments if it fails to make any of its payments in a timely fashion.

3. Advance Payments

46. FIT and UTC support our proposal to require that regulatory fee payments in the Private Radio services be made in advance. We will require that full payment for Private Radio service regulatory fees due over the entire term of the authorization be submitted at the time an applicant in the Private Radio service submits its new, renewal or reinstatement application.[16] For example, regulatees in the private, shared use services would submit a one time regulatory fee of $35.00 per license to cover the entire five-year term of their license or authorization. Moreover, until expiration of that authorization, we will not subject regulatees submitting advance fee payments to submit another (supplementary) fee payment for the same authorization until expiration of that authorization, notwithstanding any subsequent increase in the applicable annual fee. In instances in which a license is transferred to another service and, therefore, becomes subject to a different annual fee, as in the case of Private Radio licensees as they become Commercial Mobile Radio Service licensees, we have generally decided to apply any advance payment to the new annual fee requirement resulting from that reclassification. Thus, the licensee would become subject to payment of the difference between its initial fee payment and the amount required under the fee schedule for its new service.

47. For FY 1994, no Mass Media or Common Carrier regulatory fees

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[16] Regulatory fee payments submitted with applications that are subsequently dismissed or denied will be returned upon request.

will be subject to collection as small fees. However, in future years, we may decide to collect advance payments of fees in these services in the event that we conclude that the fee required is small and our experience shows that it is inefficient to collect the fee on an annual basis.

4. Timing Of Payment

48. As noted, the date for payment of standard fees will be announced by public notice and published in the Federal Register. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media and Cable Services whose fees are not based on a subscriber, line or circuit count, fees should be submitted for any authorization held as of October 1, 1993. We have selected October 1 as the date for calculating these fees since October 1 is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from our regulatory activities since the beginning of the period covered by their payment.[17]

49. In the case of regulatees whose fee payments are based upon a subscriber, line or circuit count, we have decided that the number of a regulatee's subscribers, lines or circuits on December 31, 1993 will be used to calculate the fee. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of the last day of the calendar year for internal purposes. Therefore, calculation of the subscriber fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted. Cable systems should calculate their FY 1994 regulatory fees using the subscriber data that was provided to the Commission for the 1993 Annual Report of Cable Television Systems (FCC Form 325A) submission. Accordingly, the number of subscribers will not necessarily be based on December 31, 1993, but rather on "a typical day in the last full week of December 1993." (See FCC Form 325 Instructions at page 1). Finally, since entities in the Private Radio services pay their fees when applying for an new, renewal or reinstatement license, we will require Private Radio applicants to submit a regulatory fee with new, renewal and reinstatement applications filed following the effective date of these rules.

5. Method and Location of Payment

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[17] In light of this decision, the comments by Orbital Communications Corporation, GE American Communications, Inc. and Starsys Global Positioning, Inc. concerning appropriate payments for satellites that became operational after commencement of the fiscal year are moot.

50. We proposed to adopt generally the same methods of payment for regulatory fees as we established for application fees. See 47 C.F.R. S 1.1108(a). In addition, we proposed to establish a process to permit the electronic filing of fee payments, initially on an experimental basis. Further, we proposed to permit payment of fees by credit card (VISA and Mastercard) in some circumstances subject to the requirement that, when a credit card payment is made, the entire fee payment must be made in a single credit card transaction.

51. Several parties have requested clarification of our requirements for multiple fee payments by Private Radio licensees.[18] Other parties support our proposals concerning payment methods, particularly our decision to accept credit cards and electronic payments.[19]

52. We have designed FCC Forms 159 (Remittance Advice) and 159-C (Continuation sheet) to replace Form 155. We are satisfied that the forms, and our rules, provide sufficient clarification of our requirements concerning multiple fee payments. These forms are to be submitted with any regulatory fee payment in the mass media, common carrier and cable services. Payors, in the Private Radio services making a single regulatory fee payment, other than by electronic means or credit card, are not required to file a Form 159 as long as their accompanying application form provides the information necessary to accomplish the payment.

6. Multiple Payments

53. Generally, we will permit any entity, including licensees in the private radio services, to make multiple section 9 regulatory (and section 8 application) fee payments within the same lockbox, including, where applicable, installment payments. Under this procedure, a single payment form and a single instrument of payment may be used to cover multiple regulatory fee payments.[20] A multiple regulatory fee payment also may cover payments by more than a single regulatee. Regulatees making combined payments of regulatory fees and application fees within the same lockbox for the Private Radio services may make payment with a single payment instrument and are to submit with the multiple payment a Form 159 and, if needed, a Form 159-C. Also, any regulatee making payment by credit card, including licensees in the private radio services, must submit a Form 159. See Appendix **D** for specific

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[18] See comments filed by FIT, Naber and UTC.

[19] See comments filed by SWB and Bell Atlantic.

[20] Payors of regulatory fees for vanity call signs must submit a Form 159 with their applications.

instructions concerning the use of Forms 159 and 159-C.

54. Each regulatee will remain solely responsible for assuring that its applications and authorizations are properly accounted for and listed, and for submitting the full, cumulative payment covering each of its licenses and authorizations.[21] As described below, payment deficiencies could lead to penalty charges, dismissal of applications and revocation of authorizations.

55. As proposed in our NPRM, we are establishing a single lockbox at our lockbox bank for the receipt of mass media, common carrier and cable regulatory fees. The single lockbox will accept Mass Media, Common Carrier and Cable Services regulatory fee payments and will enable regulatees to submit fee payments for these services to the same lockbox and to combine their fee payments for these service categories. However, Private Radio fees will not be accepted at this lockbox and, instead, should be submitted to the lockbox designated for application fees covering the category of license or authorization for which the payment is made. See sections 1.1152 through 1.1155 for the address, including lockbox number regarding payment of regulatory fees for the specific categories of service.

7. Electronic Payments

56. We have decided to proceed cautiously with our implementation of electronic fee payments. We require that regulatees intending to make fee payments electronically submit a written request to the Managing Director and obtain his written authorization or that of his designee prior to making their initial electronic payment.[22] Following authorization by the Office of the Managing Director, a payor may either instruct its bank to make payment of a regulatory fee directly to our lockbox bank or authorize us to direct our lockbox bank to withdraw

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[21] Payment of a regulatory fee may be made by a third party, as NABER and NECA request. However, the entity subject to the requirement to pay the fee will remain responsible for ensuring correct and timely payment.

[22] NYNEX has suggested that responsibility for recommending rules and procedures relating to the electronic payment of regulatory fees by common carriers be given to the proposed advisory committee that would be established to assist the Common Carrier Bureau in the development and implementation of an electronic filing system. See Public Notice, 9 FCC Rcd 1293 (1994). Since our system for the electronic payment of fees will soon be operational, we decline to combine these tasks into a single project. However, the Commission staff involved in these undertakings will closely coordinate their activities.

funds directly from the payor's bank account. It is the responsibility of the entity subject to the regulatory fee payment to assure compliance with our electronic payment procedures. We will announce specific procedures for electronic payment by public notice. Failure to comply with these procedures will result in the return of the fee payment and a penalty of 25 percent if the subsequent refiling of the payment is late. Any late payment resulting from a failure to comply with our electronic fee payment procedures will also subject the payor to the penalties set forth in section 1.1163 of the rules.

57. Credit card payments may be made only with Mastercard and Visa since at this time these are the only credit cards authorized for payments to the United States Treasury. Credit card payments must be accompanied by a Form 159. Failure to accurately enter an authorized signature and the credit card name, number and date of expiration in blocks 22 and 23 of Form 159 will result in the return of the credit card payment and any associated filing.

E. Enforcement of Regulatory Fees Statute and Regulations

58. As provided in section 9(c) of the Act, we proposed to enforce payment of regulatory fees by: 1) assessing monetary penalties for late payment, 2) dismissal of applications and, 3) in egregious cases, revocation of existing licenses and authorizations. 47 U.S.C. § 159(c). In addition, we proposed to pursue delinquent regulatees under the Debt Collection Act, 31 U.S.C. § 3711 et seq., and related statutory provisions.

1. Penalties for Late Payment

59. Any regulatee that fails timely to pay its regulatory fee or make an installment payment shall be assessed a 25 percent penalty. See 47 U.S.C. § 159(c)(1). A regulatory fee is untimely paid when it is not received at the lockbox bank by the date we establish for payment.[23] A fee payment is also considered late filed if an instrument of payment is not collectible. A 25 percent penalty will be assessed against any outstanding amount due on a fee, including any amount past due on an installment payment.

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[23] The NAB and the Society of Broadcast Engineers have proposed that we consider a regulatory fee payment to be timely submitted if the payment is postmarked by the date it is due. At least for FY 1994, we have decided to continue our practice of requiring fee submissions to be received by the date due. We believe retention of this practice for regulatory fee payments for FY 1994 is necessary to enable us to process these payments efficiently.

2. Dismissal of Application

60. We will dismiss any application, group of applications or other filings in the private radio services when a regulatee fails timely to submit any regulatory fee or associated penalty. 47 U.S.C. § 159(c)(2). A fee payment will be considered to be late filed if a timely filed instrument of payment is uncollectible and the deficiency is not the result of bank error.[24] Thus, an application required to be submitted with a regulatory fee will be returned without action if the fee is not filed with the application. Moreover, if the returned application is mutually exclusive and must be filed by a date certain (or is required to be filed by a date certain for any other reason), the application will be dismissed as untimely if resubmitted subsequent to the filing deadline.[25]

3. Revocation

61. Section 9(c)(3) provides the Commission with authority to revoke an existing license or other authorization for nonpayment of a regulatory fee. 47 U.S.C. § 159 (c)(3). We proposed to reserve our revocation remedy for egregious cases of nonpayment. Section (9)(c)(3) does not require a finding of "willful or repeated" failure to make payment before a license or authorization may be revoked. Further, the section affords the right to a hearing only if a regulatee's response to our notice of revocation presents a "substantial and material question of fact."

62. Consistent with the statutory framework for revocation, any revocation hearing will be resolved by written evidence only and the burden of proceeding and the burden of proof will be on the respondent. As proposed, we will provide a period of 60 days for a regulatee to respond to our notice of revocation in order to assure that the subject regulatee will have a full opportunity to obtain the funds needed to make payment and to prepare its case. Further, we will assess the regulatee for the costs for the conduct of any revocation proceeding unless the regulatee

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[24] As noted in the NPRM, we will not accept instruments of payment other than cashier's checks for payors who are notified that payment will not be accepted by other payment methods. Of course, while we discourage the use of cash for the payment of fees generally, payment by cash is permissible. See 31 U.S.C. § 5193. We will not be responsible for cash lost or stolen in the process of delivery to our lockbox bank.

[25] In any case in which a fee payor believes that a monetary or other penalty has been wrongfully imposed, the fee payor may file a petition requesting that the penalty be set aside.

"substantially" prevails at the hearing. 47 U.S.C. § 159(c)(3). Finally, pursuant to section 9(c)(3), an order of revocation will not become final until the respondent regulatee has had an opportunity to exhaust its rights to judicial review under section 402(b)(5) of the Act. 47 U.S.C. S 402(b)(5).

63. MCI recognizes that we should use our authority to revoke licenses and assess penalties as tools to enforce payment of fees. However, MCI urges that we restrict their use to cases where a licensee "willfully" has acted in bad faith in not paying the required fee. MCI states that this is particularly important for licensees with large and complex operations in services where licensing information currently is not included in our records since licensees with numerous authorizations may have no other way to confirm existing licenses. In these instances, according to MCI, we should attempt to resolve nonpayment issues informally since most fee payment disputes should be quickly and easily resolved.

64. We agree with MCI that our revocation powers should not be lightly invoked. We stated in the NPRM that we would reserve the right to revoke licenses held by a delinquent regulatee, but that we did not foresee the need for revocation, except in egregious circumstances. We will not consider a failed payment to be egregious as long as the regulatee demonstrates that its deficiency was not due to gross neglect in maintaining its records or in preparing to meet its obligation to make the fee payments. However, we intend to automatically assess delinquent payors a 25 percent penalty for late or missing payments, and such assessments will be strictly enforced.

4. Debt Collection Act Remedies

65. In addition to those specific remedies for nonpayment or untimely payment of regulatory fees provided in section 9, we will invoke our powers under the Debt Collection Act against any regulatee failing to pay a regulatory fee. See 31 U.S.C. S 3711 et seq. We will afford a regulatee a 30 day period to respond to our notice of delinquency before invoking the procedures provided in the Debt Collection Act. Moreover, when necessary, we will refer outstanding debts of delinquent regulatees to the Internal Revenue Service for offset. See 31 U.S.C. S 3720A. Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process. See 31 U.S.C. S 3717.

IV. Regulatory Fee Categories

66. In our NPRM, we provided an explanation of the regulatory fee categories subject to the payment of a fee under the schedule established by Congress. 47 U.S.C. § 159(g). Where a regulatory

fee category required additional interpretation or clarification, we relied on the legislative history of section 9 and our experience in establishing and regulating the various services. The categories and amounts set out in the schedule may, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in our appropriations, costs and changes in the nature of our regulated services. See 447 U.S.C. § 159(b)(2), (3).

67. Several parties have submitted comments regarding the regulatory fee categories. Generally, the comments addressed issues concerning possible adjustment of the required fees, the absence of certain services from the fee schedule, and definitions of terms important to payment of the fees. We address these comments below. In certain instances, we have clarified our explanation of a fee category based upon the comments of the parties. See Appendix B.

A. Private Radio Bureau

68. The two basic levels of statutory fees allocated for Private Radio Services, exclusive use and shared use services, were established on the premise that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share channels of marginal quality.[26] House Report at 17. In addition, because of the relatively small fee amounts levied in the Private Radio Services, as we proposed in the Notice, applicants for new licenses, reinstatement and renewal licenses will be required to pay a regulatory fee covering an entire license term. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee since the expiration date of modified or assigned licenses will not reflect a new license term.

1. Exclusive Use

69. B&S disputes our interpretation of the fee schedule's requirement for Private Radio Service fees. Essentially, B & S contends that the term "shared use services," as it appears in the Schedule of Regulatory Fees, applies to systems that share use of their licensed facilities with others. According to B&S, an 800 MHz Specialized Mobile Radio Service licensee providing service to end users is an example of a shared use service because the SMRs customers are sharing the same base station facility. B&S argues that their analysis is consistent with 47

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[26] As noted, for FY 1994, we will not impose a regulatory fee upon applicants for lifetime restricted radiotelephone permits and radio operator licenses.

C.F.R. § 90.179 and precedent interpreting that provision of our rules. According to B&S, it follows that "exclusive use services" are comprised of licensed facilities that are used only by the licensee. An example of what B&S considers an exclusive use service is a licensee in the Taxicab Radio service that operates an internal communications system in the 470-512 MHz band.

70. B&S confuses the concept of shared use of a particular licensed facility with that of shared channel assignments. Under 47 C.F.R. § 90.179, a licensee or group of licensees may choose to share base station facilities on a non-profit or not-for-profit basis. In contrast, shared channel assignments require licensees to be licensed for the same channel for the same geographic area, and it is this latter concept that the Schedule of regulatory fees clearly addresses. As we have recently explained in our Notice of Proposed Rulemaking in PR Docket No. 92-235,[27] the private land mobile radio services licensed below 470 MHz[28] do not enjoy exclusive use of their channel assignments in a particular geographic area, and must accept a greater degree of co-channel interference.[29] In contrast, channel assignments above 470 MHz, including the SMR service, are granted on either an exclusive basis, with no other co-channel use authorized in a geographic area, or are licensed on an "earned exclusivity" basis, where co-channel use is capped. Thus, licensees of services above 470 MHz enjoy a lesser degree of interference than those below 470 MHz than those below 470 MHz, and, accordingly, are required to pay the higher regulatory fee. To accept B&S's interpretation would ignore the established demarcation point between "shared" and "exclusive" channel assignments that 470 MHz represents.

71. RAM Mobile Data USA Limited Partnership (RMD) states that 900 MHz SMR licensees should be required to pay a fee based upon their total number of licensed Designated Filing Areas (DFA) rather than their number of base station and frequencies individually licensed with a DFA. RMD contends that an assessment based upon total DFAs licensed is more consistent with Congress' intention that regulatory fees be "reasonably related

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[27] 8 FCC Rcd 8105, paras 11-13 (1992).

[28] The 220-222 MHz band is the sole exception, where we have created exclusive use channels below 470 MHz.

[29] While there may be rare instances where a particular licensee below 470 MHz does not share its channel assignment with other licensees in a geographic area, these licensees have no ability to preclude new licensees from requesting the same channel assignment.

to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. § 159(b)(1)(A). Further, RMD states that section 9(g)'s fee requirements will compel a consolidation of its licenses in order to minimize its fee payments. Similarly, the Utilities Telecommunications Council (UTC) objects to the requirement that 220 MHz licensees submit fees on a per license basis.

72. We decline to consider amending the section 9(g) fee schedule for FY 1994. As we have stated, Congress did not intend that we adjust any aspect of the fee schedule for FY 1994. RMD and UTC may submit their proposals for amending the fee schedule in our proceeding to establish regulatory fees for FY 1995.[30] Of course, RMD and any other licensee may surrender or modify their licenses and other authorizations in order to minimize their regulatory fee burden.

2. Marine (Coast and Ship Stations)

73. Numerous formal and informal commenters, including the United States Coast Guard, raise concerns about our proposal to collect a regulatory fee from licensees in the marine service, including licensees using radio equipment voluntarily installed on small vessels, such as recreational boats.[31] These parties contend that a waiver, or exemption, for vessels that voluntarily carry radio equipment would enhance maritime safety and promote the public interest. As support, the parties state that marine radio provides a vital link between recreational boaters and emergency safety entities, as well as an important source for weather and navigational information. Further, they contend that

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[30] RMD asks that we waive our requirement that SMR licensees pay their fees in advance and, instead, permit them to submit these fees on an annual basis. RMD contends that the overall fees that may be imposed on SMR systems are not "small" and, therefore, fall outside the category of fees that Congress authorized us to collect in advance. We decline to allow RMD to pay its fees on an annual basis because Congress specifically indicated that fees for private radio services licensees, including licensees of SMR systems, would be considered small and subject to the payment of fees in advance. See H.R. Rep. No. 207, 102d Cong., 1st Sess. 11 (1991).

[31] In addition to the USCG, the commenters include the National Marine Electronics Association, Radio Technical Commission for Maritime Services, State of Nevada, Division of Wildlife and the United States Power Squadrons. We also received and considered informal comments filed by numerous parties concerned about the regulatory fee required from recreational boaters.

the regulatory fee, added to the existing application fee, will act as a substantial disincentive for recreational boaters to carry, maintain and operate marine communications equipment.

74. We recognize that radio communication between recreational boaters and various emergency safety entities provides an important public service. However, our authority to waive a fee requirement is limited to "narrow" and "compelling circumstances." 2 FCC Rcd 947, 961 (1987); H.R. 3128, H.R. Rep. No. 453, 99th Cong. , 1st Sess. 39-42, 423 (1985). In view of this strict Congressional limitation , we do not believe that a "blanket waiver" granted to boaters operating marine radios is permissible, absent legislative amendment.

3. General Mobile Radio Service

75. The Personal Radio Steering Group (PRSG) requests that we lower the annual fee for licensees in the General Mobile Radio Service (GMRS). PRSG states that, because the Schedule of Regulatory Fees does not explicitly include a fee for GMRS, we have authority to reduce its fee. Moreover, PRSG contends that the service should be subject to a lower fee than that for other shared use services because it is intended primarily for personal communications, similar to the Amateur Radio Service.

76. We agree with PRSG that section 9(g)'s fee schedule contains no explicit terms regarding the GMRS. However, that section does require the payment of a fee by "shared use" services in the private radio service. GMRS is within that category of service and was explicitly mentioned in the House Report as a service that would be subject to a fee. Therefore, we conclude that GMRS licensees are subject to a $7.00 fee for each year of the license term, payable in advance upon the filing of a GMRS application. We decline to rule on the merits of PRSG's argument that its fees should be lowered because, as discussed above, we conclude that Congress for FY 1994 intended us to assess fees in accordance with its Schedule.

B. Mass Media Services

1. Broadcast Stations

77. The regulatory fees in the Schedule for Mass Media services generally include broadcast licensees, permittees and other regulatees. As discussed above, we have exempted noncommercial educational broadcasters from regulatory fees. To the extent possible, we intend to use the Bureau's computer data bases to verify the identity of regulatees subject to regulatory fees in the Mass Media services.

78. Several commenters contend that the statutory fee schedule is unfair to certain categories of licensees in the Mass Media

services and complain that the schedule fails to impose a fee on other categories of regulatees. De La Hunt Broadcasting Corporation and the Broadcasting Associations believe that radio broadcaster licensees should be assessed regulatory fees on a market-size basis, in a manner similar to the fees mandated for television stations. The NAB urges that we adjust the schedule for radio broadcast licensees when we consider appropriate fees for future years. Further, the Broadcasting Associations contends that we should not include a television station as being in a major market unless that station serves the metropolitan area of that particular market.

79. We decline to consider any adjustments to the schedule for FY 1994 for radio and television stations. As we explained above, we believe that Congress did not intend that we adjust any aspect of the fee schedule it established for FY 1994. Interested parties may submit comments, however, addressed to modifying the method for assessment of radio and television broadcasting fees at the time we issue our proposed schedule of fees for FY 1995.

2. Television Stations

80. Section (9)(g) provides that the regulatory fee charged a television licensee will be determined by the size of its market. We recognized in our NPRM that Arbitron no longer provides television rating information. However, no party has proposed that we rely on another mechanism for determining market size. Therefore, we will utilize Arbitron's ADI rankings for 1993-1994 for the determination of television markets for assessing our FY 1994 regulatory fees since it appears, at this time, that these are the most familiar and readily available tools for determining the relative ranking of television markets.

81. KBS License L.P. (KBS) and the NAB argue that satellite television stations should not be subject to the same regulatory fee payment as fully powered television stations. The NAB contends that satellite television stations should be assessed as if they were television translator stations. KBS argues that our proposal to assess fees for satellite stations at the same level as full powered stations is inconsistent with section 9. First, in KBS's view, Congress established regulatory fees for commercial television stations, and did not set any fee requirement for satellite television stations. Second, according to KBS, Congress intended the Commission to charge licensees fees based on the regulatory burden they impose, yet satellite stations require much less regulatory oversight than full powered stations. Also, KBS contends that the fee would place an unfair and illogical burden on small market licensees who use satellite television stations to reach remote areas in their markets.

82. Section 9(g)'s fee schedule establishes specific fees for

commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations. It is also clear that these satellite stations are not "translator stations," which are also listed in the schedule. TV translator stations are low-powered facilities that rebroadcast the signals of a full service television broadcast station, including a satellite station, and are afforded secondary status vis-a-vis full service television stations. Also, unlike satellite stations, they are not subject to the technical, operational and program service obligations that are imposed on all full service broascast stations, including satellite stations.[32] Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations. We therefore reject KBS's argument that Congress failed to establish a fee for television satellite stations. However, there are anomalies concerning the treatment of satellite stations that are a matter of concern to us and that we believe would be appropriate for consideration on a case-by-case basis. First, where a licensee would be required under the fee schedule to pay a higher fee for its satellite station than for the parent station, we will entertain petitions to reduce the satellite station's fee to the same amount as the fee due for the parent station. In such a case, the licensee would be required to submit with its request an amount no greater than the fee due from the parent station. Second, in any situation in which payment of the fee would cause a diminishment of a licensees ability to continue to serve the public, we will entertain requests for waiver or reduction of the fee upon an appropriate showing. In this instance, the licensee would not be obligated to pay the fee until resolution of its waiver request.

83. KBS and the NAB may submit comments in our future proceeding to establish regulatory fees for FY 1995, supporting their positions concerning the need to distinguish between satellite and fully operational stations when assessing regulatory fees. As explained above, for FY 1994, we shall make no adjustments to Congress' fee schedule pursuant to section 9(b).

3. Broadcast Auxiliary

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[32] Unlike other full service television broadcast stations, satellite stations have not been subject to the Commission's multiple ownership restrictions. However, that distinction is currently under review in our Second Further Notice of Proposed Rulemaking in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991).

84. The Society of Broadcast Engineers, Inc. (SBE) believes that broadcast auxiliary facilities, such as remote pick-up stations, and aural, television and low power auxiliary stations, should not be subject to any regulatory fee. SBE explains that there is no justification to apply a regulatory fee to these facilities since they are essentially self-regulating and impose little burden on our resources. As indicated above, we shall not modify any of section 9(g)'s fee requirements for FY 1994, but SBE may raise these issues in future proceedings.

4. ITFS and DBS

85. Finally, the Joint Parties contend that we should amend the fee schedule to add several services not subject to fees for FY 1994. These services include the commercial offering of Instructional Television Fixed Services (ITFS) and Direct Broadcast Satellite Service (DBS). We decline the Joint Parties' request to add these services to the schedule for 1994 since Congress did not provide us the authority to add any service to the schedule for FY 1994. Moreover, we are aware that ITFS is a predominantly nonprofit service with limited commercial use and, further, that DBS is not expected to become operational prior to the time for calculating fee payments for FY 1994.[33] To the extent that the Joint Parties wish to renew their arguments concerning the inclusion of these services for future years, they may do so when we consider our fee payment schedule for FY 1995.

C. Common Carrier Bureau

86. Most common carrier regulatory fees are based on the size of a regulatee's communications operation as determined by its number of stations, subscribers, access lines, or antennas. We intend to rely upon the Common Carrier Bureau's licensing data bases to confirm the identity and fee amount for most radio common carriers to the extent possible. We also intend to perform periodic, random audits to determine whether individual regulatees have reported the correct multiplier.

1. Cellular and Public Mobile Licensees

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[33] The Joint parties point out that the fee schedule contains no explicit fee requirement for Multipoint Distribution Service (MMDS). However, our schedule, modeled on the schedule contained in section 9(g) of the Act, explicitly requires the payment of a regulatory fee by Domestic Public Fixed licensees, operating under Part 21 of our rules. Since MMDS is a Part 21 service, it is fully subject to the regulatory fee prescribed for Part 21 licensees.

87. The Personal Communications Industry Association (PCIA) states that we should define the term "subscriber" as it applies to Part 22 and personal communications services licensees. PCIA suggests that we require Part 22 licensees to pay their fees based on the number of customers on their billing lists and urges that we permit Part 22 licensees to submit their fee payments pursuant to systemwide aggregations of subscribers. Also, PCIA contends that we should permit paging licensees to calculate their fees by aggregating their total subscribers, rather determining their fee payments by call sign, as required by section 9(g), and to submit one instrument of payment per carrier system.[34]

88. Our rules do not define a mobile service subscriber. For purposes of calculating regulatory fees, we will define a subscriber to a mobile service as an individual or entity authorized by the mobile service provider to operate under its blanket license in exchange for monetary consideration. Further, any Part 22 licensee may submit a single, aggregate payment to cover the regulatory fees due for each of its individual systems. However, each individual system and service should be clearly enumerated on the payor's FCC Form 159 accompanying the fee payment. PCIA may submit its proposal to modify the method for calculating fee payments by paging licensees in our proceeding for establishing fees for FY 1995.

2. Air-Ground Radiotelephone Service

89. Claircom Communications Group, L.P., GTE and In-Flight Phone Corporation request clarification of the definition of "subscriber" in section 9(g) when applied to the payment of regulatory fees for the Air-Ground Telephone Service. Unlike conventional telephone service, subscribers to that service, usually operators of commercial aircraft, lease their service for the purpose of making it available to their own customers. There is no contractual relationship between the air-ground service operator and the end user of its service. Consequently, as suggested by the parties, we will treat the operator of an aircraft in which its service is installed as the subscriber to the service and charge the fee based upon the number of transceivers leased by the operator. Similarly, licensees in the air-ground service should include in their total fee a payment on a transceiver basis for service they provide to users other than commercial aircraft, such as private aircraft.

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[34] PCIA also requests that we recalculate the regulatory fee for CMRS for FY 1995. PCIA may submit its comments regarding the fee for CMRS in the proceeding we establish to prescribe fees for FY 1995.

3. Space Stations

90. Comsat General Corporation (Comsat), GE American Communications, Inc. (GE American), Orbital Communications Corporation (Orbital) PanAmSat, L.P. (Panamsat) and Starsys Global Positioning, Inc. (Starsys) have submitted comments addressed to our proposals concerning the requirements of satellite licensees to submit regulatory fees. Comsat and GTE state that the regulatory fee for a geosynchronous orbit space station is excessive. Comsat argues that the fee requirement should be lowered for FY 1994 because these systems no longer require the regulatory attention they received in their earlier developmental stage. It argues that the fee also is a disincentive to maintaining older and underutilized satellites in orbit for back up purposes and is anticompetitive and anti-consumer. As we have stated earlier, we shall not adjust the schedule of fees that Congress has enacted for the assessment of fees for FY 1994. Comsat may submit its comments in the future proceeding that we will initiate in order to establish appropriate fees for FY 1995.

91. We also received comments from Orbital and a reply comment from Starsys concerning when a satellite space station becomes subject to the fee requirement. Section 9(g) requires that the payment of a regulatory fee by the operator of any "operational" space station in geosynchronous orbit. We agree with the commenters that a satellite does not become "operational" immediately upon its launch. Therefore, as proposed by the commenters, we will consider a space station in geosynchronous orbit to be subject to the fee when it has been certified by its operator to be operational in accordance with section 25.120(d) of the rules. This certification indicates that the satellite has been placed in its authorized orbit and is operating in the authorized frequency bands at the authorized power levels. Similarly, a space station or system will be considered to have terminated its operation when its licensee certifies to us that the satellite has ceased to operate.

92. Also, we will consider a space system in low earth orbit (LEO) subject to the fee payment when its first satellite becomes operational even though all its space stations are not yet operational. Similar to our treatment of geosynchronous satellites, the system will become subject to a fee payment upon the certification by the licensee that the operations of the first satellite in its system conform to the terms and conditions of its authorization pursuant to 47 C.F.R. § 25.120(d).

4. Earth Stations

93. AMSC Subsidiary Corporation contends that no payment of regulatory fees for earth stations and mobile terminals should be

required until their related satellite system is operational.[35] However, we observe that the licensing of satellite earth stations is entirely separate from the licensing of space stations and that fixed-satellite earth stations are generally licensed to operate with any and all domestic satellite systems located in that portion of the geostationary orbit for which the earth station has been frequency coordinated. It is common practice for a satellite system to provide preliminary service via unrelated space stations before its own stations are launched and operational.

94. We will require the licensee of an earth station to pay a fee once it has certified that the earth station's construction is completed. However, in those rare instances in which a license limits an earth station's operational authority to a particular satellite system and that system is not operational on the date for calculating the fee, the fee will not be due until the first satellite of the related system becomes "operational" within the meaning of our fee rules.

5. Interexchange and Local Exchange Carriers

95. Generally, the comments of local exchange carriers (LECs) and interexchange carriers (IXCs) raise issues concerning the basis upon which they are to calculate their fee payments, the need for a definition of the term "subscriber," and a date for calculating their fee payments.[36]

96. We will adopt our proposal to permit the holding company of local exchange carriers to aggregate fee payments due by its operating companies and submit a single payment to cover the fee requirements of its subsidiaries.[35] We have considered the proposals of several commenters, including Ameritech, Nynex and SWB, that LECs submit fees based upon ARMIS data. However, ARMIS

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[35] AMSC states that its satellite will be launched in December 1995, but that its earth and mobile stations will likely be licensed before September 1994.

[36] Allnet and MCI point out that resellers and pay telephone operators are not among those regulatees listed in the fee schedule. We will review whether these entities should be directly subject to a fee payment in the course of our proceeding to determine regulatory fees for FY 1995.

[35] We agree with Allnet that entities operating as both LECs and IXCs are subject to a regulatory fee for both categories of service. However, as GTE suggests, we will require a carrier to submit only a single payment when a single commonly-owned line serves as both a presubscribed line and an access line.

data is required from comparatively few LECs and we would still need a mechanism to calculate the fees due from the vast majority of LECs. Therefore, we have decided that all LECs are to calculate the amount of their regulatory fees based upon the number of working loops as described in section 36.611 of our rules, governing the submission of Information to the National Exchange Carrier Association (NECA).[36] We believe that this definition will be simple to administer since the LECs currently compile subscriber loop data, and it will provide a consistent formulation for the assessment of fees from all LECs.[37] As noted, for FY 1994, we will require LECs to calculate their fee payments for FY 1994 as of December 31, 1993.[38]

97. In the NPRM, we invited comments concerning section 9(g)'s assessment of regulatory fees from IXCs on a subscriber basis. In response, AT&T, opposed by Wiltel, Inc., argues that fee payments by IXCs should be based on gross revenues, not by the number of a carrier's subscribers. We decline to reach the merits of AT&T's argument at this time because, as indicated

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[36] NECA has proposed to process regulatory fees on behalf of its pooling exchange carriers and to submit their consolidated fees to our lockbox bank in a single instrument of payment. We have no objection to NECA's submission of the fee on behalf of its pooling exchange carriers or others. However, we remind entities subject to the payment of a regulatory fee that the regulatee, not an agent, such as NECA, is responsible for ensuring that the payment is made and that it is subject to penalty for failure to submit the entire fee due in a timely manner. LECs will be expected to pay their fees based upon the number of access lines as determined by NECA. In case of a dispute between a carrier and NECA concerning the carrier's line count as of December 31, 1993, NECA will certify its calculation of the carrier's line count and the basis for its calculation.

[37] We expect competitive access providers (CAPs) to submit fee payments based upon their line count as required under section 9(g). Ameritech, GTE and other interested parties may submit their views on the proper method of assessing regulatory fees for CAPs in our proceeding to establish fees for FY 1995.

[38] Several LECs, including Ameritech, GTE, NYNEX and Bell South, opposed by Allnet, contend that their regulatory fee payments qualify for exogenous treatment under the price cap rules and ask that we allow their regulatory fee expense to be charged directly to their subscribers. Their request is beyond the scope of this proceeding. LECs seeking to charge their regulatory fees directly to subscribers should petition for a waiver of the Commission's rules.

above, we shall not adjust the fee schedule for FY 1994. Any reformulation of the basis upon which IXCs are to base their fee payments would constitute a substantial adjustment to the fee schedule that Congress enacted. IXCs shall file fees based on the total number of common lines presubscribed to that IXC as determined pursuant to section 69.116 of the rules. 47 C.F.R. § 69.116. AT&T may submit its views concerning the appropriate method of assessing fees from IXCs in our proceeding to establish regulatory fees for FY 1995.

6. International Bearer Circuits

98. Panamsat requests clarification concerning the assessment of regulatory fees for international circuits. Section 9 (g)'s Schedule provides that the fee is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasable right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. In the NPRM, we stated that the fee would be based upon active 64 KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit equivalent of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international services are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits such as circuits derived by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz	No. of Equivalent 64 KB Circuits
36	630
24	288
18	240

D. Cable Services

99. Several commenters contend that the fee prescribed for cable television services should be paid on an exact per subscriber

count rather than per 1,000 subscribers, as we proposed.[39] These commenters argue that the latter formulation would cause small cable systems to pay a disproportionately high regulatory fee. For example, a cable system with 100 subscribers would be subject to the same fee as a system with 1,000 subscribers.

100. The text of section 9(g)'s fee schedule provides for the assessment of a fee for cable television systems at the rate of $37O.00 per 1,000 subscribers. Upon further consideration, we agree with the commenters that Congress did not intend that this provision required that a system pay its fee as if it served 1,000 subscribers when in fact it provides services to fewer than 1,000 subscribers.[40] Following this formulation to its logical extreme would impose on small cable systems a disproportionate burden of the aggregate cable service regulatory fee since it would result in the assessment of larger fees upon small systems, particularly those with fewer than 1,000 subscribers. Thus, we believe Congress' purpose was to require cable systems to formulate their fee based on the schedule's assessment of $370.00 per 1000 subscribers, but to pay the fee on an exact per subscriber count. Payment of the cable fee on the basis of the exact count of a system's subscribers will eliminate the inequity perceived by the commenters.

101. NCTA and Nationwide support our proposal to permit cable systems to submit their regulatory fees on the basis of the aggregate fee payable by commonly owned systems.[41] Therefore, we will permit commonly owned cable systems to combine their fee

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[39] These commenters include the United States Small Business Administration, Cable Services, Inc., the Cable Telecommunications Association, the National Cable Television Associations, Nationwide Communications, Inc. and the Small Cable Business Association.

[40] We reject the Joint Commenters' argument that the regulatory fee for cable systems be reduced when any of a system's channels are made available to competitors pursuant to 47 U.S.C. § 532. Congress has based the regulatory fee for cable systems upon the number of subscribers served, not the number of a system's channels available for the system's direct use.

[41] NCTA, the Joint Commenters and Continental request authority for cable systems to pass through their regulatory fees to cable television subscribers as external costs. Only those items currently itemized in the rule as external costs may be passed through to cable subscribers. Regulatory fees are not among the enumerated items and the pass through process is not the subject of this proceeding. Therefore, this matter should be addressed separately.

payments for submission to our lockbox bank. Finally, for purposes of calculating the fee due from cable operators, we will adopt the definition of a cable subscriber, including bulk rate subscriber, used for FCC Form 325. See FCC Form 325 Instructions (Page 3).

V. Amendments to Application Fee Rules

102. In addition to the new rules for regulatory fees, we are revising several sections of our rules governing fees associated with applications and other filings. Filing fees are required pursuant to section 8 of the Communications Act and are administered separately from the regulatory fees authorized under section 9.[42]

A. Fees for Resubmitted Applications

103. We have amended section 1.1107(d) of the rules, as proposed. Section 1.1107(d) governs fee payments relating to applications and other filings when resubmitted in the appropriate timeframe following a staff request for additional or corrected information. We have amended section 1.1107(d) to require persons submitting applications or other filings that have been returned for additional information or corrections and that do not require any additional fees to submit these applications and other filings directly to the Bureau/Office making the request. Applications requiring additional fees must be filed at our lockbox bank with the remittance for the entire additional amount due. In the event that the staff discovers, within 30 days after the resubmission, that the additional fee payment was not submitted, the application or other filing will be dismissed as deficient and the previously submitted section 8 fee payment will be retained under this proposal. A new fee payment (covering the entire amount of the revised fee) will be required with any future filing of the application or other filing. However, if the staff discovers the fee payment deficiency more than thirty days subsequent to the resubmission, the application or other filing will be retained, but a 25 percent late fee will be assessed on the deficient amount even if we have completed our action on the application or other filing involved.

B. Stale Checks

104. Our lockbox bank will not process a personal or business check dated more than six months prior to its submission.

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[42] We will publish in the FCC Record actions, including actions taken on delegated authority, related to the application and regulatory fee rules that have precedential value.

Therefore, we have revised section 1.1108(a) of the rules to make clear that these "stale" checks will not be accepted as fee payments. Under this revision, we will not accept any instrument of payment dated more than six months prior to the date of its filing with the lockbox bank, and we will return to the filer any application or other filing submitted with a stale payment instrument. Further, we will not accept any third party checks (i.e., checks with the name of any third party as the maker or endorser).

C. Receipts

105. Our practice with regard to stamped receipts for application fee payments is to furnish receipts only upon specific request of the submitter rather than to provide receipts automatically for all fee payments received. We are clarifying these procedures by amending section 1.1108 of the rules. In order to obtain a receipt for a fee payment, section 1.1108 will require that the application and fee package include a copy of the first page of the application or other filing, clearly marked "copy," submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the fee payment package. The staff will date-stamp the copy immediately and provide it to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelop of sufficient size to contain the date-stamped copy of the application. We will provide a receipt for regulatory fee payments, upon request, if we are furnished with a copy of Form 159 or the first page of an application in the private radio services accompanying the fee payment and the request otherwise conforms with the procedures we have adopted for receipts of application fees.

D. Electronic Application Fee Payments

106. We are adopting rules regarding the submission of regulatory fee payments by electronic means. Revised sections 1.1107 and 1.1108 of the rules allow the payment of application and other filing fees by electronic means, although our system for electronic payment is not yet fully in place. In our NPRM, we stated our concern about matching electronically paid fees with submitted hard-copy applications.[43] If a party chooses to pay its application filing fee electronically, we will require that the entity follow existing procedures for filing its application at the lockbox bank. However, in lieu of the current payment methods, the party will indicate on its remittance advice

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[43] We note that some parts of the Commission are currently experimenting with electronic filing of applications.

(FCC Form 159 or the underlying application form with fee information incorporated therein) that payment is being sent to the bank electronically. The electronic payment must be made on or before the day the application is filed. Upon receipt of an application, the bank will confirm that a fee payment has been received electronically. If the electronic payment is not received on the filing date, the application or request will be returned without processing. We believe these procedures are necessary to ensure the most efficient processing of electronic fee payments (when authorized) and applications or other filings. Finally, during the pilot phase of our electronic payment program, regulatees will be required to obtain our prior authorization before making electronic fee payments. (See paragraphs 56 and 57, above.)

E. One Check/One Application Rule

107. We are modifying our rules to allow the use of a single payment instrument or method to cover multiple applications for the same or different applicants, so long as all the applications are filed at the same time at the same lockbox. Any applicant desiring to pay for multiple regulatory/application filings in the same lockbox with a single payment instrument, or when paying by credit card, must also complete FCC Form 159, FCC Remittance Advice. Each item must be listed separately on the form with its own Payment Type Code. If another space is needed for multiple filings, the applicant must use FCC Form 159-C, FCC Remittance Advice Continuation Sheet.[44]

F. Payment by Cashier's Check

108. To ensure that payment instruments will result in a final payment being made to the Commission, we believe that our cashier's check safeguard should be strengthened. Accordingly, as proposed, when a person or organization has, on one or more occasions, submitted a payment instrument on which final payment is not received (and is not excused by bank error), we will immediately notify the party that future fee payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by a cashier's check (or cash), that party's other payment instrument will not be accepted and its application or other filing will be returned. 47 C.F.R. § 1.1108(d)(1)(i); see also 47 C.F.R. § 1.1110(a).

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[44] All non-private radio section 9 regulatory fee payors must use FCC Form 159/159C when submitting single or multiple regulatory fees.

G. Filing Locations for Petitions and Applications for Review

109. We have revised sections 1.1109(a)(3) and 1.1115 to clarify that any petition for reconsideration, application for review, and any petition for waiver or deferral of a fee payment, accompanied by an application or regulatory fee payment, must be submitted to our lockbox bank. If no fee payment is required and the matter is within the scope of either the application or regulatory fee rules, the request should be filed with the Secretary and clearly marked to the attention of the Managing Director.

VI. Confidentiality

110. The Cellular Telecommunications Industry Association, GTE and Southwestern Bell Corporation urge that we amend section 0.457 of our rules to safeguard the confidentiality of data submitted with regulatory fees, including fee amounts that are calculated on a per line or subscriber basis. 47 C.F.R. § 0.457. At this time, we will not amend our rules to include a provision affording automatic confidentiality for information submitted with regulatory fees. Generally, regulatees are required to submit very little data with their fee payments and it is premature for us to determine whether the disclosure of any information submitted, including the fee amounts calculated on a per subscriber basis, will warrant the protection afforded by section 0.457. Payments of regulatory fees may be accompanied by requests for confidentiality pursuant to section 0.459 of the Commission's rules. 47 C.F.R. § 0.459.

VII. Final Regulatory Analysis

111. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action:

112. This Report and Order adopts the Schedule of Regulatory Fees enacted by Congress for the assessment and collection of the Commission's regulatory fees for FY 1994 and adopts rules to govern the assessment and collection of regulatory fees for FY 1994 and future years. The rules, as required by Congress, include provisions for the advance payment of small fees, the payment of large fees by installment, and procedures for waiver, reduction and deferral of fees by regulatees that demonstrate that payment of the fee would be a financial hardship, as well as penalties for late or nonpayment of fees.

II. Summary of Comments raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

113. The Chief Counsel for Advocacy of the United States Small

Business Administration (SBA) filed comments urging that cable television system operators be permitted to pay their fees on a per subscriber basis ($.37) rather than in increments of 1,000 subscribers ($370.00) or any portion thereof. The Report and Order adopts the SBA's proposal.

III. Significant Alternatives Considered:

114. The Notice of Proposed Rulemaking in this proceeding offered many proposals, including reliance on the Schedule of Regulatory Fees as established by Congress in section 9(g) of the Communications Act, 47 U.S.C. § 159(g), exemptions from regulatory fees, installment payments for large fees, advance payments for small fees, payment procedures, including payment by electronic transfer and credit card, procedures for waiver, reduction and deferment of fees, and penalties for late or nonpayment of fees. Our proposals to adopt the service categories and fee amounts in Congress' fee schedule and for waiver, reduction and deferment of fees were discussed by many commenters. Fireweed and the Joint Commenters urged that we amend the fee schedule to reduce the fees and add services subject to a fee payment. NAB and the State Broadcasters urged that we modify our proposed procedures for requesting a waiver, reduction or deferment of a fee payment. Upon review, we affirmed that Congress intended that we utilize section 9(g)'s fee schedule for FY 1994. However, we adopted more flexible procedures for obtaining a waiver, reduction or deferment of the fees in order to afford more regulatees the opportunity to obtain a waiver, reduction or deferment of the fees and we clarified the showing required for adjustment of a fee based on financial hardship.

VIII. ORDERING CLAUSES

115. Accordingly, IT IS ORDERED that the rule changes as specified below ARE ADOPTED.

116. IT IS FURTHER ORDERED that the rule changes made herein will become effective 30 days after publication in the Federal Register. This action is taken pursuant to sections 4(i), 4(j), 8, 9 and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 158, 159, 303(r).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

RULE CHANGES

47 C.F.R. Parts 0 and 1 are amended as follows:

PART 0, COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Sec. 0.231 is amended by revising paragraph (c) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(c) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for waiver, reduction or deferment of fees, establish payment dates, and issue notices proposing amendments or adjustments to the fee schedules established under Subpart G, Part 1, of this chapter.

* * * * *

3. Sec. 0.406 is amended by revising paragraph (b)(2) to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(2) Part 1 of this Chapter, practice and procedure. Part 1, Subpart A of this Chapter contains the general rules of practice and procedure. Except as expressly provided to the contrary, these rules are applicable in all Commission proceedings and should be of interest to all persons having business with the Commission. Part 1, Subpart A of this Chapter also contains certain other miscellaneous provisions. Part 1, Subpart B of this Chapter contains the procedures applicable in formal hearing proceedings (see § 1.201 of this chapter). Part 1, Subpart C of this Chapter contains the procedures followed in making or revising the rules or regulations. Part 1, Subpart D of this Chapter contains rules applicable to applications for licenses in the Broadcast Radio Services, including the forms to be used, the

filing requirements, the procedures for processing and acting upon such applications, and certain other matters. Part 1, Subpart E of this Chapter contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in Part 21 of this Chapter. Part1, Subpart F of this Chapter contains rules applicable to applications for licenses in the Private Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Part 1, Subpart G of this Chapter contains rules pertaining to the application processing fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99-272, 100 Stat. 82 (1986)) and also contains rules pertaining to the regulatory fees established by the Omnibus Budget Reconciliation Act of 1993 (Pub.L. 103-66, 107 Stat. 397 (1993)). Part 1, Subpart H of this Chapter, concerning ex parte presentations, sets forth standards governing communications with commission personnel in hearing proceedings and contested application proceedings. Part 1, Subparts G and H of this Chapter will be of interest to all regulatees, and Part 1, Subpart H of this Chapter will, in addition, be of interest to all persons involved in hearing proceedings.

* * * * *

Part 1 Practice and Procedure

4. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j).

5. Sec. 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees and number of copies.

All applications which do not require a fee shall be filed at the Commission's main office in Washington, D.C., Attention: Office of the Secretary. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Common Carrier Bureau. All applications accompanied by a fee payment should be filed with the Commission's lockbox bank in accordance with §1.1105, Schedule of Fees. The number of copies required for each application and the nonrefundable processing fees and any applicable regulatory fees (see Subpart G of this Part) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this chapter relating to various types of applications. However, if any application is not of the type covered by this chapter, an original and two copies of each such application

shall be submitted.

* * * * *

6. Newly designated Sec. 1.1108 is amended by revising paragraphs (a) through (d) to read as follows:

§ 1.1108 Payment of charges.

(a) Electronic fee payments do not require the use of a FCC Form 159, Remittance Advice. An electronic fee payment must be made on or before the day the application and appropriate processing form are filed.

(b) The schedule of fees for applications and other filings lists those applications and other filings that must be accompanied by a FCC Form 159, Remittance Advice. A separate FCC Form 159 will not be required once the information requirements of that form (payor information) is incorporated into the underlying application form. We anticipate completing this change on or before September 30, 1997.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

NOTE: This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See § 1.1117 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely

payment of these charges are contingent and subject to recession.

* * * * *

7. Sec. 1.1109 is amended by revising paragraphs (a), (d) and (f) to read as follows:

§1.1109 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa or MasterCard credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (i.e., checks with a third party as maker or endorser) will not be accepted.

(1) Specific procedures for electronic payment will be announced by Public Notice. Applicants must submit a written request to the Commission for authorization to make electronic payments of a fee for applications and other filings, as follows.

(2) No electronic payment of an application fee will be accepted unless the payor has obtained the written authorization of the Commission to submit application fees electronically. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing and the fee payment.

(3) Payments by wire transfer will be accepted. Prior to making a payment by wire, the payor shall obtain the approval of the Managing Director or his designee. A completed FCC Form 159 shall be submitted to the Managing Director or his designee prior to initiating the wire transfer.

* * * * *

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below.

(1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's

check, the party's payment will not be accepted and its application or other filing will be returned.

* * * * *

(f) The Commission will furnish a stamped receipt of an application only upon request. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

* * * * *

8. Sec. 1.1110 is amended by revising paragraph (a)to read as follows:

§ 1.1110 Filing locations.

(a) Except as noted herein, applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1105 of the Commission's rules.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in § 1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address for the appropriate service as established in §§ 1.1102 through 1.1105, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill and a FCC Form 159 to ensure proper credit.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1116(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. § 158(d)(1) or § 1.1112 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate

service set forth in §§ 1.1102 through 1.1105.

* * * * *

9. Sec. 1.1116 is amended by revising the section heading and paragraph (c) to read as follows:

§1.1116 Petitions and applications for review.

* * * * *

(c) Petitions for waivers, deferrals, fee determinations, reconsideration and applications for review will be acted upon by the Managing Director. Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105. If no fee payment is required, and the matter is within the scope of the fee rules, the petition or application for review should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

* * * * *

10. Sec. 1.1151 is added to read as follows:

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in title VI, section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66, 107 Stat. 397), enacting section 9 of the Communications Act, 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain of its regulatory activities in the private radio, mass media, common carrier, and cable television services.

11. Sec. 1.1152 is added to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for private radio service.

Services	Fee amount	Address
Exclusive use services (per license)		
1. Land Mobile (Above 470 MHZ, Base Station & SMRS)(47 CFR, Part 90)	$16.00	FCC, Land Mobile P.O.Box __* Pittsburgh, PA 15251-5---
2. Microwave (47 CFR Pt 94)	$16.00	FCC, Microwave P.O. Box __* Pittsburgh, PA 15251-5---
3. Interactive Video Data Service	$16.00	FCC, IVDS P.O. Box __* Pittsburgh, PA 15251-5---
Shared Use Services	$ 7.00	FCC, Shared Use Services, P.O. Box __* Pittsburgh, PA 15251-5---
Amateur Vanity Call Signs	$ 7.00	FCC, Amateur Vanity Call Signs, P.O. Box __*, Pittsburgh, PA 15251-5---

NOTE: Refer to Private Radio Service Fee Filing Guide for appropriate Post Office Box.

12. Sec. 1.1153 is added to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

AM Radio (47 CFR, Part 73)		
1. Class D Daytime	$250.00	FCC, AM Branch
2. Class A Fulltime	$900.00	P.O. Box 358835
3. Class B Fulltime	$500.00	Pittsburgh, PA
4. Class C Fulltime	$200.00	15251-5835
5. Construction Permits	$100.00	
FM Radio (47 (CFR, Part 73)		
1. Classes C,C1,C2,B	$900.00	FCC, FM Branch
2. Classes A,B1,C3	$600.00	P.O. Box 358835
3. Construction Permits	$500.00	Pittsburgh, PA 15252-5835
TV (47 CFR, Part 73)		
VHF Commercial		
1. Markets 1 thru 10	$18,000	FCC, TV Branch
2. Markets 11 thru 25	$16,000	P.O. Box 358835
3. Markets 26 thru 50	$12,000	Pittsburgh, PA
4. Markets 51 thru 100	$ 8,000	15251-5835
5. Remaining Markets	$ 5,000	
6. Construction Permits	$ 4,000	
UHF Commercial		
1. Markets 1 thru 10	$14,400	FCC, UHF Commercial
2. Markets 11 thru 25	$12,800	P.O. Box 358835
3. Markets 26 thru 50	$ 9,600	Pittsburgh, PA
4. Markets 51 thru 100	$ 6,400	15251-5835
5. Remaining Markets	$ 4,000	
6. Construction Permits	$ 3,200	
Low Power TV, TV Translator, & TV Booster (47 CFR, Part 74)	$ 135	FCC, Low Power P.O. Box 358835 Pittsburgh, PA 15251-5835
Broadcast Auxiliary	$ 25	FCC, Auxiliary P.O. Box 358835 Pittsburgh, PA 15251-5835
International (HF) Broadcast	$ 200	FCC, International P.O. Box 358835 Pittsburgh, PA 15251-5835

13. Sec. 1.1154 is added to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Radio Facilities		
1. Cellular Radio (per 1,000 subscribers	$ 60	FCC, Cellular
2. Personal Communications	$ 60	P.O. Box 358835
3. Space Station (geo orbit)	$65,000	Pittsburgh, PA
4. Space Station (low earth)	$90,000	15251-5835
5. Public Mobile (per 1,000)	$ 60	
6. Domestic Public Fixed	55	
7. International Public Fixed		

Earth Stations

1. VSAT & Equivalent C-Band antennas (per 100 antennas)	$ 6		FCC, Earth Station P.O. Box 358835 Pittsburgh, PA 15251-5835
2. Mobile Satellite Earth Stations (per 100 antennas)	$ 6		
3. Less than 9 meters (per 100 antennas)	$ 6		
4. 9 Meters or More			
Transmit/Receive and Transmit Only (per meter)		$ 85	
Receive Only (per meter)	$ 55		

Carriers

1. Inter-Exchange Carrier (per 1,000 presubscribed lines)	$ 60	FCC, Carriers P.O. Box 358835 Pittsburgh, PA 15251-5835
2. Local Exchange Carrier (per 1,000 access lines)	$ 60	
3. Competitive Access Provider (per 1,000 subscribers)	$ 60	
4. International Circuits (per 100 active 64KB circuit or equivalent)	$ 220	

14. Sec. 1.1155 is added to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services

1. Cable Antenna Relay Service	$ 220	FCC, Cable P.O. Box 358835 Pittsburgh, PA 15251-5835
2. Cable TV System (per 1,000 subscribers)	$ 370	

15. Sec. 1.1156 is added to read as follows:

§ 1.1156 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under sections 1.1152 through 1.1155, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the private radio services.

(1) Any regulatory fee submitted with an application in the private radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the private radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in §1.1159, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the private radio service will result in the return of the accompanying application, including an application for which the Commission has assigned a specific filing deadline.

(b) Payments of standard regulatory fees, applicable to mass media, common carrier and cable services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the Federal Register.

(1) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments.

(i) For Fiscal Year 1994, large regulatory fees may be submitted in two (2) equal installment payments at times announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the Federal Register.

(ii) For Fiscal Year 1994, installment payments may be submitted for:

(A) VHF and UHF Commercial Television Stations with a fee requirement above $12,000,

(B) Cable Television Systems whose community units' fee payments total more than $18,500,

(C) Inter-Exchange Carriers with a fee requirement above $500,000, and

(D) Local Exchange Carriers or Holding Companies with a fee requirement above $700,000,

(E) Space Stations with a fee of $65,000 or above.

(iii) Beginning in Fiscal Year 1995, payors of a large standard regulatory fee, as annually defined by the Commission, may submit their fee payments in four (4) equal installments at times to be announced by the Commission or by the Managing Director, pursuant to delegated authority and published in the Federal Register.

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1163.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled and the regulatee required to pay its fee in a single annual payment.

16. Sec. 1.1157 is added to read as follows:

§ 1.1157 Form of payment for regulatory .

(a) Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(1) Upon authorization from the Commission following a written request, electronic payment of a regulatory fee may be made as follows:

(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank, or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(iii) No electronic payment of a regulatory fee will be accepted unless

the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in section 1.1163.

(2) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(3) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(4) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the private radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in blocks number 22 and 23 of FCC Form 159 will result in rejection of the credit card payment.

17. Sec. 1.1158 is added to read as follows:

§ 1.1158 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in sections 1.1152 through 1.1155 for the specific category of fee involved.

(1) Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to Sections 1.1153 through 1.1155 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in sections 1.1153 through 1.1155 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in sections 1.1152 through 1.1155.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee

payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked "copy" and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

18. Sec. 1.1159 is added to read as follows:

$1.1159 Refunds of regulatory fees.

(a)Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regulatory fee is required or an excessive fee has been paid.

(i) In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in Block Number 3 of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to Section 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless,

(ii) When a licensee in the private radio service surrenders the license or other authorization subject to a fee payment to the Commission,

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with section 1.1165 of this subpart.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

19. Sec. 1.1160 is added to read as follows:

§ 1.1160 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) will be dismissed and returned;

(ii) shall lose its place in the processing line; and

(iii) will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made the Commission will:

(i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection;

(ii) Notify the grantee of this action; and

(iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded;

(i) Upon such notification, the grantee will immediately cease operations
initiated pursuant to the authorization.

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described above would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

20. Sec. 1.1161 is added to read as follows:

§ 1.1161 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1155 of this subpart, unless otherwise qualified herein, shall be required for:

(a) Applicants, permittees or licensees in the Amateur Radio Service, except that any person requesting a vanity call-sign, following the effective date of these rules, shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152 of this Subpart.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants, permittees or licensees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as an organization possessing nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. § 501.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with Sec. 73.503 of the rules.

(f) Applicants, permittees, or licensees qualifying under Sec. 1.1161(e) requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), private radio service, or common carrier communications service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station on a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under Sec. 1.1161(e), may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating proposing a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under Sec. 1.1159 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (Subparts D, E, and F of Part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station (Sec. 74.901 et seq.) is exempt from regulatory fees where the authorization requested will be used by the

applicant in conjunction with the provision of the instructional service

(i) Applications filed in the private radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

21. Sec. 1.1162 is added to read as follows:

§ 1.1162 Adjustments to regulatory fees.

(a) For Fiscal Year 1994, the amounts assessed for regulatory fees are set forth in sections 1.1152 through 1.1155.

(b) For Fiscal Year 1995 and thereafter, the Schedule of Regulatory Fees, contained in sections 1.1152 through 1.1155, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. § 159. Adjustments to the fees established for any category of regulatory fee payment shall include of projected cost increases or decreases of the in volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall

(1) be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, Cable Services Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest,

(2) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described above,

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph(c)(2), above, changes in the amount appropriated for the performance of the activities described in section (c)(1), above, for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of (c)(1), above. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest $5.00 in the case of fees under $1,000.00, or to the nearest $25.00 in the case of fees of $1,000.00 or more.

22. Sec. 1.1163 is added to read as follows:

§ 1.1163 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not

excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee or installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases where a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with private radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(1) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing the application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee no less than 60 days to either pay the fee or show cause why the payment assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. See 47 U.S.C. § 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. § 3717, and to the provisions of the Debt Collection Act, 31 U.S.C. § 3717. See 47 C.F.R. § 1.1901-1.1952.

(i) The debt collection processes described above may proceed concurrently with any other sanction in this subsection.

23. Sec. 1.1164 is added to read as follows:

§ 1.1164 Payment by cashier's check for regulatory fees.

(a) Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

24. Sec. 1.1165 is added to read as follows:

§ 1.1165 Waivers, reductions and deferrals of regulatory fees.

(a) The fees established by sections 1.1152 through 1.1155 of this subpart may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(1) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §1.1152 through 1.1155 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules, the request should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(2) Deferrals of fees will be granted for a period of six months following the date that the fee is initially due.

(3) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(4) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251-5835.

25. Sec 1.1166 is added to read as follows:

§ 1.1166 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. Challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked "Attention: Fee Supervisor". Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not toll the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and

applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

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Appendix B

Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act. 47 U.S.C. § 159(g). Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of Section 9, our own experience in establishing and regulating the various services subject to a fee requirement and the comments of the parties in our proceeding to adopt fees for Fiscal Year 1994 and establish rules to implement the regulatory fee program. The categories and amounts set out in the schedule might, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in the Commission's appropriations, our costs of providing the regulatory services to be recovered by the fee program, and additions, reductions and changes in the services subject to the fee requirement. See 47 U.S.C. §159(b)(2), (3).

1. Private Radio Bureau

2. The two levels of statutory fees for Private Radio services, exclusive use service and shared use services, were established on the basis that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality channels. House Report at 17. In addition, because of the relatively small annual fee amounts in the Private Radio Services, applicants for new licenses and reinstatements and for renewal of their current licenses will be required to pay a regulatory fee covering an entire license term, with only a percentage of all licensees paying a regulatory fee in any one year.

3. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee. The expiration date of these authorizations will not reflect a new license term when either modifications or assignments are processed. In an effort to reduce public confusion, the Commission has provided separate post office box addresses for these actions.

a. Exclusive Use Services

4. Land Mobile. Regulatees covered under this category include those authorized under Part 90 of the Commission's Rules to provide limited access private radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220-222 MHz band and

frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS). These land mobile licensees are subject to a regulatory fee of $16 per license per year. They will pay either a $80 or $160 regulatory fee (depending whether their license term is 5 or 10 years).[1]

5. Microwave. Private microwave systems, authorized under part 94 of the Commission's Rules, provide telecommunications services between fixed points and are often used to relay data and to control railroad, pipeline and utility equipment. Microwave licensees are required to pay the total regulatory fee for the entire term of their license when filing their initial or renewal application. The annual fee is $16 for a total of $80 to be filed with the application.

6. Interactive Video Data Service (IVDS). IVDS is a two-way point-to-multi-point radio service which provides information about products and services, and allows subscribers to respond through their television sets. IVDS is offered on a private carrier basis and is authorized under Part 95, Subpart F of the Commission's Rules. IVDS licensees will be assessed a regulatory fee of $80 per license to cover each five year license term ($16 per year).

b. Shared Use Services and Other Authorizations

7. The specific categories of shared-use services listed below are not on the statutory schedule but were listed in the House Report. As discussed above, we propose that emergency and public safety services would be exempted from regulatory fees.

8. Aviation (Aircraft and Ground Stations). The aircraft radio service provides communications between aircraft or from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities. See generally 47 C.F.R. Part 87. Aviation aircraft transceiver stations are subject to a regulatory fee of $7 per year per station (the total fee of $70 per station for ten year license term is to be paid at the time a renewal or new application is filed). Aviation ground stations provide communications to aircraft for weather or landing information, or for logistical support to aircraft operations. These stations are subject to a regulatory fee of $7 per year per license (the total fee of $35 per license for five year license term is to be paid at the time a renewal or new application is filed).

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[1] Some of these services may be reclassified when the Commission implements the recent amendments to section 332 governing the provision of mobile radio services. See n. 11.

9. Marine (Coast and Ship Stations). Marine coast stations are land-based stations in the maritime services, authorized under Part 80 of our rules, which provide communications services to ships and other watercraft in coastal and inland waterways. Coast stations are subject to a $35 regulatory fee for each license, covering the five year license term ($7 per year). Marine ship stations, also authorized under Part 80, provide telecommunications between watercraft or between watercraft and shore-based stations. Shipboard radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. Ship stations are assessed a $70 regulatory fee per station, covering the ten year license term ($7 per year) and is to be paid at the same time a license renewal application or new application is filed.

10. General Mobile Radio Service (GMRS). GMRS, authorized under Part 95 of the Rules, is a land mobile radio service that provides personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications. Each GMRS license is subject to a $35 regulatory fee, which covers the five year license term ($7 per year) and is to be paid at the same time a license renewal application or new application is filed.

11. Other Land Mobile. Licensees in the land mobile services not covered in the exclusive use category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis. These services, authorized under Part 90 of the Rules, include radiolocation services, private carrier paging, industrial radio services and land transportation radio services. Regulatory fees will be assessed on a per license basis with the $35 fee covering the five year license term ($7 per year) and is to be paid at the same time a license renewal application or new application is filed.

c. Amateur Vanity Call-Signs

12. If Part 97 of the Rules is amended by the Commission to authorize the use of vanity call-signs, amateur radio operators would be able to request a specific call-sign. See Notice of Proposed Rule Making in PR Docket No. 93-305, 9 FCC Rcd 105 (1993). Each amateur licensee with a vanity call-sign will be assessed a regulatory fee of $7 per year. The total fee of $70 will cover the ten year license term during which the call sign will be in use. The first 10-year fee must be paid at the time a request for a vanity call-sign(s) is made. If a requested vanity call-sign is not available or otherwise cannot be issued to the requestor, the regulatory fee will be refunded since amateurs are expressly exempt under the statute from regulatory fees, unless they have received their vanity call-sign.

2. Mass Media Bureau

13. The regulatory fees for Mass Media services generally apply to broadcast licensees and permittees and to other regulatees.[2] We have exempted noncommercial educational broadcasters from regulatory fees.

a. AM Radio Stations

14. Class A. Class A AM radio stations are unlimited time stations operating on a clear channel and designed to render primary and secondary service over an extended service area and at relatively long distances from their transmitters. Class A stations' primary service areas are protected from objectionable interference from other stations on the same and adjacent channels, with secondary service areas protected from interference from other stations on the same channel. The operating power shall not be less than 10 kW nor more than 50 kW. For FY 1994, each licensee of a Class A AM station will be assessed a $900 annual regulatory fee.[3]

15. Class B. Class B AM radio stations are unlimited time stations rendering service only over a primary service area. These stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW (or 10 kW for stations that are authorized to operate in the 1605-1705 kHz band). For FY 1994, each licensee of a Class B AM station will be assessed a $500 annual regulatory fee.

16. Class C. Class C AM radio stations operate on local channels

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[2] We note that some Mass Media services, such as the direct broadcast satellite service ("DBS"), the Instructional Television Fixed Service ("ITFS"), and FM translators and boosters were not specifically listed in the statutory schedule. 26 We believe that ITFS was excluded because of its general educational noncommercial status. We also believe that the omission of DBS and FM translators and boosters was inadvertent and that Congress did not intend to exempt all DBS permittees and licensees and licensees of FM translators and boosters from regulatory fees as these services result in the Commission incurring costs for necessary regulatory functions. Since these services are not on the statutory schedule, we have not assessed fees for these services during the 1994 fiscal year. However, pursuant to our authority in section 9(b)(3) to modify the schedule, we intend to add regulatory fee categories for DBS licenses and for FM translators and boosters to be assessed and collected during the 1995 fiscal year.

Regulatees are to pay the fee to which their facility is subject on the date the fee is due.

and are designed to render service only over a primary service area that may be reduced as a consequence of interference. These stations are authorized to operate at not less than 0.25 kW, nor more than 1 kW. Class C stations that were previously licensed to operate with 0.1 kW may continue to do so under our rules. For FY 1994, each licensee of a Class C AM station will be assessed a $200 annual regulatory fee.

17. Class D. Class D AM radio stations operate either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 141 mV/m at one km. Class D stations operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and Class B operations during nighttime hours. For FY 1994, each licensee of a Class D AM station will be assessed a $250 annual regulatory fee.

18. AM Construction Permits. For FY 1994, persons holding a construction permit for a any class of a new AM station are subject to a $100 annual regulatory fee for each outstanding permit. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the designated class of the licensed station, as described above, as of the date the regulatory fee payment is due.

b. FM Radio Stations

19. Licensed Stations. FM radio stations must meet the location, power and antenna height requirements for stations designated as Classes C, C1, C2, or B, as set forth in sections 73.205, 73.210 and 73.211 of the Commission's Rules. For FY 1994, each commercial licensee of a Class C, C1, C2 or B FM station will be assessed a $900 annual regulatory fee per license. FM radio stations meeting the location, power and antenna height requirements for stations designated as Classes A, B1, or C3, as set forth in the Commission's rules, have a smaller coverage area. Thus, for FY 1994, each commercial licensee for a Class A, B1, or C3 FM station will be assessed a $600 annual regulatory fee per license.

20. FM Construction Permits. Persons holding a construction permit for a any class of a new FM station, except Class D, are subject to a $500 annual regulatory fee per outstanding permit in FY 1994. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead, licensees will pay a regulatory fee based upon the designated class of the licensed station, as described above, as of the date the regulatory fee payment is determined.

c. Television Stations

21. VHF and UHF Commercial Licenses. Commercial VHF and UHF television licensees, including licensees of satellite stations, will be assessed a regulatory fee amount based on the ranking of the station's market. Specifically, for FY 1994 these annual regulatory fees are as follows:

VHF Commercial	
Markets 1 through 10	$18,000.00
Markets 11 through 25	$16,000.00
Markets 26 through 50	$12,000.00
Markets 51 through 100	$8,000.00
Remaining Markets	$5,000.00
UHF Commercial	
Markets 1 through 10	$14,400.00
Markets 11 through 25	$12,800.00
Markets 26 through 50	$9,600.00
Markets 51 through 100	$6,400.00
Remaining Markets	$4,000.00

Stations authorized as "satellite" television stations pursuant to note 5 of Section 73.3555 of the Commission's Rules (47 C.F.R. § 73.3555 note 5) will be assessed a fee on the same basis as other full power stations in the same market.

23. Television licensees subject to a regulatory fee above $12,000 will be automatically eligible to make two equal installment payments.

24. We have decided to rely upon the latest Arbitron market data to determine a television station's market ranking for purposes of assessing regulatory fees. These rankings may be found in the Television and Cable Factbook published by Warren Publishing. Changes in market rankings may affect regulatory fee amounts for the following fiscal year.

25. Television Construction Permits. For FY 1994, persons holding a construction permit for a new VHF television station, in any size market, are subject to a $4,000 annual regulatory fee per outstanding permit. UHF construction permits for stations in any size market will be assessed a $3,200 annual regulatory fee. Upon issuance of an operating license to cover the construction permit, this construction permit fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the licensed station's market ranking, as described above.

d. Low Power TV, TV Translator, and TV Booster Stations

26. Under Part 74 of the Commission's Rules, low power UHF and VHF TV stations operate with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility, and may retransmit the programs and signals of a full-

power TV broadcast station, originate programming, and/or operate as a subscription service. TV translator stations are authorized to retransmit the programs and signals of TV broadcast stations without significantly altering the characteristic of the original signal other than its frequency and amplitude, for the purpose of providing TV reception to the general public.

27. TV booster stations are operated by the licensee of a full service TV broadcast station to retransmit the programs and signals of the licensee's station by amplifying and reradiating such signals, without significantly altering the characteristics of the original signal other than its amplitude. For FY 1994, licensees of these secondary television broadcast stations will be assessed a $135 annual regulatory fee per license.

e. Broadcast Auxiliary Stations

28. Licensees of remote pickup stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations, authorized under Part 74 of the Commission's Rules, will be assessed a $25 per license annual regulatory fee for FY 1994. These auxiliary stations are associated with a particular television or radio broadcast station. Hence, those licensees will be required to pay the required regulatory fees for each auxiliary license they hold. Individual users under 47 C.F.R. Subpart D, F and H will similarly have to pay the required regulatory fee for each auxiliary license they hold.

f. International (HF) Broadcast Stations

29. International broadcast stations are licensed to operate on frequencies in the 5,950 khz to 26,100 khz band to provide service to the general public in foreign countries. For FY 1994, each international broadcast licensee will be assessed an annual regulatory fee of $200 per license.

3. Cable Services Bureau

a. Cable Antenna Relay Service

30. Cable television antenna relay service ("CARS") stations are used to transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by cable television systems. See 47 C.F.R. Part 78. For FY 1994, each CARS licensee will be assessed an annual regulatory fee of $220 per license.

b. Cable Television Systems

31. For FY 1994, each cable television system, as that term is

defined in section 76.5 of our rules, will be assessed an annual regulatory fee of $.37 per subscriber.[4]

31. We will allow installment payments for these regulatory fees if the annual fee of a cable television system or a group of commonly owned systems aggregating their regulatory fees exceeds $18,500.

4. Common Carrier Bureau

32. Most common carrier regulatory fees are based on the size of a regulatee's communication operation as determined by number of stations, subscribers, access lines, or antennas.

a. Mobile Services

33. Cellular and Public Mobile Licensees. Under Part 22 of our rules, common carriers are authorized to offer land-based or air-to-ground mobile telephone or paging services to the public. In addition to cellular telephone service, these services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio. For FY 1994, each common carrier license authorized under Part 22 will be assessed an annual regulatory fee of $.06 per subscriber.

34. Personal Communications Services. Licensed personal communications services ("PCS") will consist of a wide variety of commercial or private mobile communications services, including advanced paging, microcellular telephone communications, portable facsimile and other video and data transmission services. See generally, First Report and Order, Gen. Docket No. 90-314 and ET Docket No. 92-100, 8 FCC Rcd 7162 (1993) (narrowband PCS); Second Report and Order, Gen. Docket No. 90-314, 8 FCC Rcd 7700 (1993) (broadband PCS). The statutory Schedule of Regulatory Fees enacted in the 1993 Budget Act established an annual fee of $60 per 1000 subscribers for PCS licensees. At the same time, the 1993 Budget Act recognized that PCS licenses have not yet been issued. In particular, Congress directed the Commission to conclude its PCS rulemaking proceedings (Gen. Docket No. 90-314 and ET Docket No. 92-100) by February 6, 1994, and to commence the PCS licensing process by May 7, 1994.[5] In addition, our new PCS service rules provide licensees five years to meet minimum

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[4] The term "subscriber" is defined in section 76.5 of the Commission's Rules. 47 C.F.R. § 76.5.

[5] Section 6002(d)(2), 1993 Budget Act. See Second Report and Order in Docket 93-252, FCC-94-31, adopted February 3, 1994.

construction requirements.[6] Accordingly, since it is unlikely that any PCS licensee will have a significant number of subscribers in the immediate future, no regulatory fees will be collected from PCS licensees during the 1994 fiscal year. We intend to begin assessing and collecting regulatory fees for PCS in the 1995 fiscal year.

b. Space Stations

35. Space Stations in Geosynchronous Orbit. Domestic and international satellites, positioned in orbit to remain approximately fixed relative to the earth, are authorized to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1994, entities authorized to operate these space stations in accordance with section 25.120(d), will be assessed an annual regulatory fee of $65,000 for each operational station in geosynchronous orbit on the date for calculating fees. 47 C.F.R. 25 § 120(d). Payment may be made in two installments.

36. Space Stations in Low-Earth Orbit. Domestic and international non-geostationary satellites, positioned in a low-earth orbit ("LEO"), may be authorized to transmit to satellites and fixed or mobile earth stations. These services include the new non-voice, non-geostationary mobile-satellite service, see Report and Order, CC Docket No. 92-76, 8 FCC Rcd 8450 (1993). Entities authorized to operate LEO systems will be assessed an annual regulatory fee of $90,000 for each such system. For purposes of assessing regulatory fees, a LEO operator is required to submit its annual regulatory fees in the fiscal year in which it commences operating its first satellite, pursuant to section 25.120(d), even though all the space stations specified in its application or instrument of authorization have not become operational. 47 C.F.R. § 120(d). While it appears unlikely that a LEO system will be operational by the date for calculating fees for the 1994 fiscal year,[7] should a LEO system be operational on the date for calculating fees during that period, we will require payment of a regulatory fee for such operational systems. The entire annual fee amount will required. Payment may be made in two installments.

c. Public Fixed Radio Services

37. Domestic Public Fixed Services. Licensees in the Domestic

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[6] See First Report and Order, at ¶ 37; Second Report and Order, at ¶ 134 (petitions for reconsideration pending).

[7] See Report and Order, at ¶ 18 (a permittee must begin construction of its first two satellites of its system within one year of grant of its construction permit).

Public Fixed Services are authorized to use microwave frequencies for video and data distribution communications within the United States. These services, authorized under Part 21 of the Rules, include the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Multipoint Distribution Service (single-channel and multichannel) and Digital Electronic Message Service. For FY 1994, these licensees will be assessed an annual regulatory fee of $55 per call sign.

38. International Public Fixed Service. Licensees in the International Public Fixed Service are authorized as common carriers to provide radio communications between the United States and a foreign point via microwave, HF, troposcatter systems (other than satellites and satellite earth stations). This does not include service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. See 47 C.F.R. Part 23. For FY 1994, these licensees will be assessed an annual regulatory fee of $110 per call-sign.

d. Earth Stations

39. VSAT and Equivalent C-Band Antennas. Earth station systems comprising very small aperture terminals make up authorized networks operating in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. Each system, authorized pursuant to blanket licensing procedures in Part 25 of the Rules, consists of a network of technically-identical small fixed-satellite earth stations which often includes a larger hub station. For FY 1994, entities holding VSAT authorizations will be assessed an annual regulatory fee of $.06 per antenna. Entities with less than 100 antennas will be subject to a minimum $6 fee.

40. Mobile Satellite Earth Stations. Under Part 25 of the Rules, mobile satellite service providers operate under blanket licenses for mobile antennas (transceivers), which are smaller than one meter and provide voice or data communications, including position location information, for mobile platforms such as cars, buses or trucks. For FY 1994, licensees will be assessed an annual regulatory fee of $.06 per antenna. Entities with fewer than 100 antennas will be subject to a minimum $6 fee.

41. Earth Station Antennas Less Than 9 Meters. Persons authorized or registered under Part 25 to operate fixed-satellite earth station antennas that are less than 9 meters in diameter are private and public carriers that provide telephone, television, data, and other forms of communications. This category includes antennas used to transmit and receive, transmit only, or receive only. Also included in this category are telemetry, tracking and control (TT&C) earth stations. For FY 1994, we will assess an annual regulatory fee of $.06 per antenna. Entities with less than 100 antennas will be subject to

a minimum $6 fee.

42. Earth Station Antennas 9 Meters or Greater. This category covers fixed-satellite earth station antennas authorized under Part 25 that are equal to or greater than 9 meters in diameter. These earth stations are operated by private carriers and common carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking, and control (TT&C) earth stations equal to or greater than 9 meters in diameter. For FY 1994, persons authorized to operate transmit/receive and transmit-only antennas will be assessed an annual regulatory fee of $85 per meter; receive-only antennas will be assessed a regulatory fee of $55 per meter. All measurements will be to the tenth of a meter.

e. Interexchange and Local Exchange Carriers

43. For FY 1994, interexchange carriers (long distance telephone companies) ("IXCs") will be assessed an annual regulatory fee of $.06 per presubscribed line. Similarly, local exchange carriers (local telephone operating companies) ("LECs") will be assessed an annual regulatory fee of $.06 per access line. A holding company may combine the fee payments of its operating companies and pay their fees for a particular service in a single combined payment or by installments, if the aggregate of their fees in a single service qualifies the holding company to make installment payments. For IXCs we have identified regulatory fee payment amounts greater than $500,000 as large. For LECs, we have identified $700,000 as a large amount. Thus, we will to permit IXCs whose annual regulatory fee exceed $500,000 and LECs whose fee payments exceed $700,000 to make installment payments.

f. Competitive Access Providers

44. Competitive access providers ("CAPs") are companies, other than the traditional local telephone companies, that provide interstate access services to long distance carriers and other companies. For FY 1994, each CAP will be assessed an annual regulatory fee of $.06 per subscriber.

g. International Bearer Circuits

45. The Schedule of Regulatory Fees provides that the fee for international bearer circuits is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasable right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. The fee is based upon active 64

KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz	No. of Equivalent 64 KB Circuits
36	630
24	288
18	240

Appendix C

Formal Comments[1] were filed by:

Government Agencies

United States Coast Guard
Small Business Administration

Private Radio Parties

Association of American Railroads
Association of Public-Safety Communications Officials-International, Inc.
American Radio Relay League, Incorporated
Dennis C. Brown and Robert H. Schwaninger
Forest Industries Telecommunications
Industrial Telecommunications Association, Inc.
National Association of Business and Educational Radio, Inc.
State of Nevada, Division of Wildlife
National Marine Electronics Association
National Marine Manufacturers
Personal Communications Industry Association
Personal Radio Steering Group, Inc.
Radio Technical Commission for Maritime Services
Ram Mobile Data USA
Utilities Telecommunications Council

Mass Media Parties

Association of America's Public Television Stations
Carnegie-Mellon Student Government Corporation
De La Hunt Broadcasting Corporation
Fireweed Communications Corp.
KBS License, L.P.
National Association of Broadcasters
New Jersey Broadcasters Association
Society of Broadcast Engineers
Joint Filing by Named State Broadcasters Associations

Cable Services Parties

Joint Filing by Blade Communications, Inc., Cablevision Industries Corp, Crown Media, Inc., Multivision Cable TV Corp., Parcable, Inc., Providence Journal Company, Sammons Communications, Inc., and Star Cable Associates
Cable Services, Inc.
Cable Telecommunications Association
Continental Cablevision, Inc.
Leonard Communications

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[1] Numerous informal comments were also filed. Although the informal commenters have not been listed, full consideration has been given to their filings.

Nationwide Communications, Inc.
National Cable Television Association
Pepper & Corrazzini
Small Cable Business Association

Common Carrier Parties

Allnet Communications Services, Inc.
American Telephone and Telegraph Company
Ameritech
AMSC Subsidiary Corporation
Bell Atlantic
BellSouth Telecommunications, Inc.
Claircom Communications Group
Cellular Communications of Puerto Rico
Cellular Telecommunications Industry Association
Comsat General Corporation
GE American Communications, Inc.
GTE Service Corporation
In-Flight Phone Corporation
MCI Telecommunications Corporation
National Exchange Carriers Association, Inc.
National Telephone Cooperative Association
NYNEX Corporation
Orbital Communications Corporation
PanAmSat, L.P.
Puerto Rico Telephone Company
Southwestern Bell Corporation
Sprint Corporation

Formal Reply Comments were filed by:

Ameritech
GTE Service Corporation
McCaw Cellular Communications, Inc.
MCI Telecommunications Corporation
National Telephone Cooperative Association
Puerto Rico Telephone Company
RAM Mobile Data USA
Southwestern Bell Corporation
Sprint Corporation
STARSYS Global Positioning, Inc.
Wireless Cable Association International, Inc.
Wiltel, Inc.
Young & Jatlow

Separate Statement of Commissioner James H. Quello

Implementation of Section 9 of the Communications Act
Assessment and Collection of Regulatory Fees
for the 1994 Fiscal Year

I am writing separately to express my concern with two issues in this item: the regulatory fee that will be assessed for television satellite stations, and the fee for marine radios. In both instances, the fees set forth in this item are excessive in light of the facilities involved. Yet I am told that Congress has spoken, and that, as a legal matter, our hands are tied with respect to fees imposed for fiscal year 1994. However, I will be looking very carefully next year, when the Commission has some discretion to modify fees, at making cuts that are fair and logical.

With respect to television satellite stations, in this item we indicate that the fee should be no greater than the fee for the parent station, and that we will entertain petitions along these lines. We also establish a waiver standard for situations in which the payment of a fee for a satellite station (or stations) would cause a diminishment of a licensee's ability to continue to serve the public. Nonetheless, I am concerned about the implementation of a significant fee against satellite stations owned by small broadcasters in rural areas to provide coverage to members of the public that typically have access to fewer over-the-air signals. While in some respects this agency may treat satellites as full service stations, I find it significant that we do not count satellite stations for purposes of determining compliance with the multiple ownership rules. Moreover, a satellite station is allowed to carry as much as 95% of the parent station's programming. Finally, as a practical matter, these satellites frequently operate effectively as translator stations. Thus, to impose the same fee for satellites as for full-service commercial stations seems anomolous.

I am also concerned about the possible adverse effects of raising our regulatory fees for marine radios used by recreational boaters. The problem is that the fees for the license term for these radios will exceed not only the cost of the average marine radio - thus discouraging recreational boaters from even buying them - but also the amount of the forfeiture the FCC would likely impose for a first-time offense for use of a marine radio without a license. Human nature being what it is, I cannot help but agree with the Coast Guard and other marine experts who fear that under these circumstances a substantial number of boaters may choose either to forego installing a radio or getting a license.

One of the principal objectives of the Communications Act is to promote public safety through the use of radio, and the statute does allow us to waive a fee requirement for "narrow" and "compelling" circumstances. To me, the possibility that marine safety could be compromised by literal compliance with the statute would constitute such a "narrow" or "compelling" circumstance.

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Before the
FEDERAL COMMMUNICATIONS COMMISSION
Washington, D. C.

FCC 94-145

In the Matter of	)	
Equal Access and Interconnection	)	CC Docket No. 94-54
Obligations Pertaining to	)	RM-8012
Commercial Mobile Radio Services	)	

NOTICE OF PROPOSED RULE MAKING AND NOTICE OF INQUIRY

Adopted: June 9, 1994; Released: July 1, 1994

Comment Date: **August 30, 1994**

Reply Date: **September 29, 1994**

By the Commission: Commissioners Quello, Barrett and Chong issuing separate statements.

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I. INTRODUCTION

1. This proceeding initiates a rule making and inquiry to address three questions reserved for later consideration in the *CMRS Second Report*[1] and raised in a petition for rule making filed earlier by MCI Telecommunications Corporation (MCI).[2] First, this rule making proceeding considers whether to impose equal access obligations upon commercial mobile radio service (CMRS) providers. Second, we consider rules to govern requirements for interconnection service provided by local exchange carriers (LECs) to CMRS providers. Third, we are issuing a notice of inquiry to determine whether to propose rules requiring CMRS providers to interconnect with each other.

2. This Notice of Proposed Rule Making and Notice of Inquiry (*"Notice"*) continues the Commission's evaluation of the CMRS marketplace launched by the recent revisions to the Communications Act.[3] By amending Section 332, Congress sought to replace traditional

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[1] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, Gen. Docket No. 93-252, 9 FCC Rcd 1411, 1448-1463, 1508 (1994) (*CMRS Second Report*).

[2] MCI Telecommunications Corporation, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, filed June 2, 1992 (MCI Petition). On August 2, 1992, the Commission issued a Public Notice, establishing a pleading cycle for comments and reply comments. *See* FCC Public Notice, DA No. 92-745, June 10, 1992; Policies and Rules Pertaining to Equal Access Obligations of Cellular Carriers, 7 FCC Rcd 4987 (Com.Car.Bur. 1992). Fifty parties filed comments and six parties filed reply comments. For a list of commenting parties see Appendix A. All comments filed in RM-8012 are hereby incorporated into this docket. We hereby grant the motion of TDS to accept its late-filed pleading in RM-8012. We further incorporate all pleadings filed in General Docket No. 93-252, which are also listed in Appendix A.

[3] *See* Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), (B), 107 Stat. 312, 392 (1993), (*Budget Act*), *to be codified at* 47 U.S.C. §§ 303(n), 332; Communications Act of 1934 *as amended* (Communications Act), §§ 203, 204, 205, 211, 212, 214, 47 U.S.C. §§ 203, 204, 205, 211, 212, and 214. Section 332 defines CMRS as "any mobile service ... that is provided for profit and makes interconnected service

regulation of mobile service with a comprehensive, consistent regulatory framework that gives the Commission flexibility to establish appropriate levels of regulation for mobile radio service providers. Commercial mobile radio service providers are treated as common carriers under the Communications Act, except that the Commission may forbear from applying the provisions of Title II other than Sections 201, 202, and 208.[4] We determined that Congress had two principal objectives in amending Section 332. First, Congress sought to ensure that similar services would be subject to consistent regulatory classification. Second, Congress sought to impose a reasonable level of regulation for CMRS providers, and to avoid unwarranted regulatory burdens for any mobile radio licensees classified as CMRS providers. In the *CMRS Second Report*, the Commission reasoned that its decisions implementing an even-handed regulatory scheme under Section 332 would promote competition by refocusing competitors' efforts away from strategies in the regulatory arena and toward technological innovation, service quality, competitive pricing, and responsiveness to consumer needs.[5]

3. Based upon the record before us, and mindful of the goals and policies of Section 332 and the *CMRS Second Report*, we tentatively conclude that, in concept, equal access obligations should be imposed on cellular licensees. We also seek comment on the costs and benefits of imposing equal access obligations on any other class of CMRS provider. As a general matter, we believe these obligations to be in the public interest because equal access would increase competition in the interexchange and mobile services marketplace, and also foster regulatory parity between wireline and wireless services. We tentatively conclude that the full panoply of equal access requirements that apply to landline LECs should not apply to CMRS providers, and seek comment on whether equal access requirements should be tailored to meet the individual circumstances of particular commercial mobile radio services.

4. Further, we seek comment on whether to require LECs to offer interconnection to CMRS providers under tariff, or whether to retain the existing requirement that LECs provide interconnection to CMRS providers pursuant to good faith contractual negotiations. We also seek comment on whether, in lieu of imposing a tariffing requirement, we should adopt certain minimum requirements for negotiated interconnection arrangements to prevent LECs from imposing unreasonably discriminatory interconnection arrangements upon new market entrants.

5. In this proceeding, we are also beginning an inquiry regarding specific issues of interconnection among CMRS providers. We seek to gather information on technical developments related to interconnection protocols, procedures, and facilities, to explore the significance of these developments for CMRS, and to seek comment on how Commission

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available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." Communications Act, § 332 (d)(1), 47 U.S.C. § 332 (d)(1).

[4] *See CMRS Second Report* at 1478-1480.

[5] *See Id.* at 1418-1420.

regulation can best foster interconnection between new services in the mobile telecommunications marketplace. As part of our inquiry into CMRS interconnection, we will explore whether to require CMRS providers to offer interconnection to resellers of CMRS in order to provide for switch-based resale of CMRS. We also seek comment on whether to impose resale obligations on any additional class of CMRS provider.

II. EQUAL ACCESS

A. Background

1. Current Equal Access Requirements

6. Most landline LECs are now subject to equal access obligations, that is, the obligation to treat equally all interexchange carriers (IXCs) seeking access to the local exchange network. The equal access obligations currently borne by cellular affiliates of Bell Operating Companies (BOCs) grew out of the Bell System divestiture decree (Modification of Final Judgment or "*MFJ*").[6] The *MFJ* requires the BOCs to offer access to the local exchange network to all interexchange carriers that is "equal in type, quality, and price" to that offered to AT&T and its affiliates.[7] Traffic which crosses a local access and transport area (LATA) boundary must, with some geographic exceptions permitted by the *MFJ* court, be handed off to the IXC selected by the subscriber.[8] Eliminating interconnection disparities between IXCs was found to be in the public interest because it removed barriers to entry and permitted unfettered competition between AT&T and other IXCs.[9] The *MFJ* allows end user customers to presubscribe to the IXC of their choice for all interLATA calling. Customer choice of interLATA carriers forces IXCs to compete to serve end users on the basis of price, service quality and responsiveness of their service offerings to customer demand, and thus enhances IXC competition.

7. For wireline carriers, the equal access obligation has been applied to local exchange service and was implemented in phases by the *MFJ* court and the Commission over a period of several years. The *MFJ* established a three-year schedule following divestiture for BOC conversion to equal access. Equal access conversion primarily involved development and

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[6] United States v. AT&T, 552 F.Supp. 131, (D.D.C. 1982) *aff'd sub nom* Maryland v. U.S., 460 U.S. 1001 (1983) (*MFJ*).

[7] *MFJ*, 552 F.Supp. at 227.

[8] The term "LATA" was created for use in the *MFJ* proceedings to avoid confusing a traditional telephone "exchange area" with the unique geographic areas created under the terms of the decree. United States v. Western Electric Co., 569 F.Supp. 990, 993 n.9 (D.D.C. 1983).

[9] *MFJ*, 552 F.Supp. at 195-196.

installation of new software in the BOC end office switches.[10] Approximately 94.4 percent of BOC end offices had been converted as of May 1, 1994.[11] Under the *MFJ*, the BOCs must provide to their customers, during the ninety days immediately preceding and the ninety days immediately following the conversion of an end office to equal access, certain information including: (1) reasonably detailed data concerning AT&T and its competitors serving the area; (2) notification to customers that the initial designation of an interexchange carrier is free, but that there may be a fee for a subsequent designation; (3) advice to the customer that if a selection is not made during the 180 day period, a later selection process might be more difficult because after the 180 day period, the BOC is only obliged to advise the customer of the availability of different IXCs.[12] The preceding information must be provided to the customers at least by means of inserts in monthly bills.[13] Customers could also make individual arrangements for service with an IXC. If no such arrangements were made, the customer was defaulted to AT&T.[14]

8. In 1983, GTE announced its plan to merge with Sprint Communications Corporation, L.P. The Justice Department subsequently filed an antitrust suit against GTE, and concurrently filed a proposed consent decree signed by the parties to settle the suit. Under this decree, each GTE operating company is required to provide access to all interexchange carriers and information service providers "equal in type and quality to that provided AT&T or other interexchange carriers. . . ." GTE's LATAs were defined according to the same criteria that were used for the BOCs, and GTE's LATA boundaries have been the subject of several waivers.[15] The *MFJ* and GTE consent decree together impose equal access obligations on LECs serving 91.7 percent of the nation's access lines.[16]

9. The Commission, in 1985, adopted equal access requirements for all landline, independent LECs, including GTE, in order to encourage competition by affording all IXCs

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[10] *Id.* at 232.

[11] *See* Industry Analysis Division, Federal Communications Commission, "Trends in Telephone Service" (released May, 1994), at Table 12, Table 13. Percentage of access lines converted is greater than the percentage of converted central offices because the non equal access offices tend to be smaller offices in rural areas.

[12] *MFJ*, 552 F.Supp. at 233.

[13] *See* United States v. Western Electric Co., 578 F.Supp. 668, 676-677 (D.D.C. 1983).

[14] *See id.* at 675.

[15] *See* United States v. GTE Corp., 603 F.Supp. 730, 744-46 (D.D.C. 1984).

[16] *See* Statistics of Communications Common Carriers, 1992-1993, Federal Communications Commission (November 1993) Table 1.1, Table 2.3.

equal access to their customers "on a reasonably uniform basis nationwide."[17] As the Commission explained, "in a more fragmented and competitive telecommunications industry the interconnection 'ground rules' must be set at the outset, particularly inasmuch as interconnection often represents the sole means for competitive carriers (and providers of equipment and facilities) to access their customers."[18] The Commission used the *MFJ*'s definition of equal access in adopting equal access rules for independent LECs.[19]

10. After it held in the *Allocation Order* that the process of defaulting the traffic of customers that had not presubscribed to an IXC to AT&T was an unreasonable practice under Section 201(b) of the Act,[20] the Commission directed the LECs to implement, with certain modifications, a Balloting and Allocation Plan developed by Northwestern Bell Telephone Company.[21] The end office conversion process is now routine, so there are few problems with equal access conversion. The same cannot be said for customer selection of a primary interexchange carrier (PIC).

11. The original allocation plan adopted by the Commission required IXCs to have a letter of agency (LOA) signed by the customer on file before submitting a PIC change order to the LEC on behalf of the customer.[22] The requirement was subsequently modified to allow IXCs to place PIC change orders if they had instituted steps to obtain signed LOAs.[23] Customer complaints alleging that they had been switched to other carriers without the customer's permission caused the Commission to adopt confirmation procedures that IXCs must follow

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[17] MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 94 FCC 2d 292, 296-97 (1983) (*MTS/WATS Notice*); MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, 100 FCC 2d 860 (1985).

[18] *MTS/WATS Notice* at 298.

[19] *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*).

[20] *See Allocation Order*, 101 FCC 2d at 920.

[21] Balloting is the part of the presubscription process in which LECs send customers ballots on which they select their primary IXC. *See Allocation Order*, 101 FCC 2d at 924-927; Appendix B. *See* paras. 86-87, *infra.*

[22] *Allocation Order*, 101 FCC 2d at 929.

[23] *Waiver Order*, 101 FCC 2d at 942.

before submitting change orders to LECs on behalf of customers.[24]

12. Application of LATA boundaries and equal access obligations to BOC cellular affiliates was not specifically addressed in the decree itself, but in subsequent orders of the *MFJ* court. The question of the applicability of *MFJ* obligations to BOC cellular affiliates arose when the BOCs sought permission to offer mobile radio services across certain LATA boundaries. The *MFJ* court granted the petition, noting that provision of "any and all mobile radio services without regard to LATA boundaries. . .would have been entirely inconsistent with the terms and purposes of the decree, and the Court would not have authorized it."[25] Later, after the U.S. Court of Appeals ruled that extra-regional cellular service is a permitted "exchange telecommunications service" within the meaning of the *MFJ*,[26] the district court concluded that the *MFJ*'s equal access obligations also applied to BOC-affiliated cellular operations.[27] Courts have not ruled on the application of equal access obligations to cellular affiliates of GTE. Consequently, at present, BOC cellular affiliates must provide equal access, but other cellular licensees and CMRS providers, who are not subject to the *MFJ*, are not obliged to do so.

2. MCI Petition

13. On June 2, 1992, MCI filed a petition requesting that we initiate a rule making proceeding to apply uniform, nationwide policies and rules to the provision of interexchange equal access by cellular licensees.[28] MCI believes this will promote interexchange competition and eliminate what it alleges to be unfair, bundled service arrangements offered by non-BOC cellular companies. MCI argues that although all cellular licensees offer their subscribers the

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[24] *See* Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992) (*PIC Verification Order*).

[25] *See* United States v. Western Electric Co., 578 F.Supp. 643, 647 (D.D.C. 1983). *See also* United States v. Western Electric Co., 673 F.Supp. 525 (D.D.C. 1987).

[26] *See* United States v. Western Electric Co., 797 F.2d 1082, 1089, 1091 (D.C. Cir. 1986).

[27] The district court made equal access a condition to the provision of extraregional cellular service by the BOCs, and subsequently affirmed the application of equal access requirements to all BOC cellular operations. *See* United States v. Western Electric Co., No. 82-0192, para. 8 (D.D.C. Feb. 26, 1986) (permitting PacTel acquisition of extraregional cellular operations subject to equal access obligations); United States v. Western Electric Co., No. 82-0192, para. 5, (D.D.C. Oct. 31, 1986) (permitting BellSouth acquisition of controlling and minority interests in extraregional cellular operations and imposing equal access obligations upon those cellular operations in which BellSouth would have a substantial investment). *See also* United States v. Western Electric Co., Civil Action No. 82-0192 (HHG), Case Nos. 971 and 2416, 1990-2 Trade Cas. ¶69,177 (Sept. 12, 1990).

[28] MCI Petition at 1.

capability to make interexchange calls, only the BOCs, by reason of the action of the *MFJ* court, are subject to equal access obligations. It alleges that the non-BOC cellular companies do not offer their customers the option of presubscribing to a preferred interexchange carrier but rather resell interexchange service to their subscribers at "full market rates."[29] MCI charges that in denying their customers the freedom to select an interexchange carrier, cellular licensees are also forcing their subscribers to pay premium rates.[30] MCI adds that the existing policy does not follow the Commission's stated interest in adopting "'rules conducive to full and fair interexchange competition.'"[31] MCI also argues that the absence of a uniformly applicable cellular equal access requirement unreasonably inhibits MCI's ability to serve its customers and prevents customers from using the interexchange carrier of their choice when roaming[32] on non-equal access cellular systems.[33] MCI further contends that equal access is both necessary and appropriate to make cellular service an integral part of the seamless, integrated nationwide telecommunications network.[34]

3. Commercial Mobile Radio Services

14. After the comments were filed with respect to the MCI Petition, but before the Commission acted on it, Section 332 of the Communications Act was revised.[35] Mobile services are now classified as either "commercial mobile radio service" or "private mobile radio service." In the *CMRS Second Report*, we concluded that the following services meet the statutory definition of a commercial mobile radio service: Part 22 public mobile services, including air-to-ground service; Public Coast Stations; private paging, except for internal use; 220 MHz Private Land Mobile, except for internal use or when not interconnected with the public switched network; Specialized Mobile Radio (SMR) services, unless not interconnected with the public switched network, and wide-area Specialized Mobile Radio services; business radio service, except for internal use or when not interconnected with the public switched network; personal

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[29] MCI Reply Comments on MCI Petition at 3.

[30] *Id. See also* CompTel Comments on MCI Petition at 4; Wiltel Comments on MCI Petition at 8-9.

[31] *Id., citing* Transport Rate Structure and Pricing, CC Docket No. 91-213, Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 5341, 5343 (1991).

[32] Roaming capability permits cellular subscribers to originate or receive calls when using their cellular telephones outside of their cellular carrier's license area.

[33] MCI Reply Comments on MCI Petition at 4.

[34] *Id.* at 7.

[35] *See* note 3, *supra*.

communications services (PCS); and certain mobile satellite services (MSS).[36]

15. In the *CMRS Second Report*, we deferred consideration of whether equal access obligations should be imposed upon PCS providers to consider together the applicability of equal access obligations to PCS providers, cellular licensees and all other CMRS providers.[37] We approach the issues of equal access and interconnection with the goals and policies of Section 332 and the *CMRS Second Report* in mind.[38]

B. Costs and Benefits of Equal Access Obligations for Commercial Mobile Radio Service Providers

1. Positions of the Parties

16. The record with respect to the costs and benefits of imposing equal access obligations on CMRS providers consists primarily of comments filed in response to MCI's 1992 petition for rule making. Some of the comments filed in the more recent *CMRS Proceeding* also address this issue.

17. **Benefits.** Many commenters, including both large and small IXCs, NARUC and two state public utility commissions, and one cellular aggregator, support imposition of equal access requirements on cellular providers.[39] Some BOCs, while preferring the elimination of equal access obligations for all cellular providers, advocate that the Commission establish a level playing field for all CMRS providers in the event that the Commission determines that equal access is in the public interest.[40]

18. MCI and other interexchange carriers argue that equal access promotes competition in the interexchange market and therefore benefits consumers.[41] These commenters

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[36] *See CMRS Second Report*, 9 FCC Rcd at 1443-1463, 1508.

[37] *CMRS Second Report*, 9 FCC Rcd at 1499, 1514.

[38] *See* para. 2, *supra*.

[39] *See e.g.,* AT&T Comments on MCI Petition at 1-4; ATC Comments on MCI Petition at 1-2; NARUC Comments in GN Docket No. 93-252 at 11; California Comments in GN Docket No. 93-252 at 11.

[40] *See e.g.,* Bell Atlantic Comments in GN Docket No. 93-252 at 30-35; Southwestern Comments in GN Docket No. 93-252 at 31.

[41] *See* MCI Petition at 5; MCI Reply Comments on MCI Petition 2-3; MCI Comments in GN Docket No. 93-252 at 11-12. *See also* Allnet Comments on MCI Petition at 1; AT&T Comments on MCI Petition at 3-4; ATC Comments on MCI Petition at 1-2; Comptel Comments

claim that many long distance customers who use cellular service are denied the same range of competitive choice they now enjoy in selecting IXCs for landline services. Likewise, IXCs' opportunities to compete on the basis of innovative features and services offered to those customers are diminished.[42] MCI argues that equal access is both necessary and appropriate to make cellular service an integral part of the seamless, integrated nationwide telecommunications network.[43] MCI argues that wholesale competition among IXCs for the carriage of all of a cellular system's long distance traffic is not sufficient competition. Without equal access, MCI warns, the telephone system in this country will become increasingly fragmented, an outcome that will eventually threaten the smooth operation of even basic service.[44]

19. MCI contends that equal access is the means by which the benefits of the billions of dollars invested by local and long distance companies in intelligent network infrastructure can be extended to the wireless customer. MCI predicts that the new era of competition in telecommunications will feature services, particularly PCS, that use intelligent networks, computerized databases, and very high speed signalling. MCI warns, however, that without equal access, neither it nor any other IXCs that have highly sophisticated intelligent networks can offer services on a competitive basis to all cellular customers. MCI claims that if equal access were uniformly available, the chief beneficiaries would be the cellular carriers and their customers, because equal access would generate additional cellular call volume and, in particular, more land-to-mobile traffic.[45]

20. NARUC and two state public utilities commissions contend that equal access for cellular carriers is consistent with the policy considerations that led to the application of equal access to landline LECs.[46] The Ohio PUC expresses concern that non-BOC cellular customers are forced to accept service from the IXC chosen by the non-BOC cellular carriers, rather than the customer's preferred IXC.[47] The Ohio PUC claims that imposing uniform equal access

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on MCI Petition at 2-3; OCOM Comments on MCI Petition at 1-3; Sprint Comments on MCI Petition at 1-2; Wiltel Comments on MCI Petition at 1-2.

[42] *See* AT&T Comments on MCI Petition at 3. *See also* MCI Reply Comments on MCI Petition at 2-6; ATC Comments at 1-2; Comptel Comments on MCI Petition at 4.

[43] MCI Reply Comments on MCI Petition at 6-12.

[44] *Id.* at 2-9.

[45] *Id.* at 9-10.

[46] *See* NARUC Comments in GN Docket No. 93-252 at 11; California PUC Comments in GN Docket No. 93-252 at 11, Comments on MCI Petition at 1-2; Ohio PUC Comments on MCI Petition at 2.

[47] Ohio PUC Comments on MCI Petition at 2.

obligations on all cellular carriers will provide the broadest range of choices, not only within the cellular market, but also in the interexchange market, to all customers served simultaneously in both markets.[48] Both the California PUC and the Ohio PUC contend that extension of equal access requirements to CMRS providers is especially important for establishing a level playing field in the local exchange marketplace, as wireless services are expected in the future to compete against the LECs' landline exchanges in the provision of local exchange service.[49]

21. Bell Atlantic and Southwestern would prefer the elimination of equal access requirements for cellular operators. In the alternative, they support equal treatment for all non-BOC-affiliated cellular licensees as well as all CMRS providers.[50] Southwestern, while urging the Commission to support Southwestern's efforts to obtain relief from the *MFJ*'s equal access requirement, argues that disparate treatment of CMRS providers does not serve the public interest.[51] Southwestern contends that similar treatment for all CMRS providers is especially important because, it argues, BOC-affiliated cellular carriers operating outside of their telephone affiliate's service area are from an economic or competitive sense indistinguishable from any other provider of CMRS.[52] Southwestern urges the Commission to consider extending equal access obligations beyond traditional cellular service to include services such as enhanced or wide-area SMR service and PCS.[53] One cellular company, Liberty, shares this view, claiming that if the Commission decides to extend equal access obligations to all cellular licensees, it should impose equal access requirements on all CMRS licensees.[54] USTA, whose membership includes both the BOCs and independent local exchange carriers, does not take a position on the merits of making equal access applicable to mobile providers, but argues that equal access should be required for providers of fixed cellular service.[55]

22. Although the *CMRS Notice* specifically sought comment on the equal access

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[48] *Id.* at 3-4.

[49] California PUC Comments in GN Docket No. 93-252 at 11; Ohio PUC Comments on MCI Petition at 4.

[50] Bell Atlantic Comments on MCI Petition at 1, 3-4; Bell Atlantic Comments in GN Docket No. 93-252 at 30; Southwestern Comments on MCI Petition at 15; Southwestern Comments in GN Docket No. 93-252 at 31. *See also* BellSouth Comments in GN Docket No. 93-252 at 34.

[51] Southwestern Comments in GN Docket No. 93-252 at 32.

[52] *Id.* at 32.

[53] *Id.* at 32-33.

[54] Liberty Comments in GN Docket No. 93-252 at 3.

[55] USTA Comments on MCI Petition at 1-3.

obligations of PCS providers,[56] most commenters addressed the entire class of CMRS providers without addressing the impact of imposing an equal access obligation on specific types of providers.[57] Bell Atlantic, BellSouth and others argue that until the *MFJ* court removes the equal access requirements for BOC cellular licensees, other wireless service providers, including PCS licensees, should be obligated to comply with these rules.[58] Southwestern reiterates its belief that if equal access is applied to cellular carriers, it should apply to all CMRS providers.[59] The California PUC claims that broadband PCS, although not yet operational, will compete with cellular providers and should not have a regulatory advantage over cellular.[60] Nextel contends that imposition of equal access burdens on its enhanced SMR systems would impose undue and unnecessary costs and administrative burdens on a start-up operation and would not, therefore, be in the public interest.[61]

23. PTC, a reseller of cellular telephone service, argues that imposition of equal access is necessary because users of cellular services frequently travel through service areas served by multiple carriers and should be able to establish an arrangement with a single IXC for

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[56] *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Notice of Proposed Rule Making, 8 FCC Rcd 7988, 8001-2 (1993) (*CMRS Notice*).

[57] During the past several months new alliances in the telecommunications marketplace have caused carriers to reexamine their positions on equal access. For example, although McCaw previously opposed equal access in its pleadings, following announcement of its proposed merger with AT&T, McCaw became a supporter of equal access, and pledged to provide equal access to its customers. *See* In the Matter of American Telephone and Telegraph Company and McCaw Cellular Communications Company, Applications for Consent to Transfer Control of Radio Licenses, File No. ENF-93-44, AT&T/McCaw Opposition to Petitions to Deny and Reply to Comments, (filed Dec. 2, 1993), at 43, 54-55.

[58] *See* Bell Atlantic Comments in GN Docket No. 93-252 at 30-31; BellSouth Comments in GN Docket No. 93-252 at 34. *See also* PTC Cellular Comments in GN Docket No. 93-252 at 11; Southwestern Comments in GN Docket No. 93-252 at 32-33.

[59] *See* Southwestern Bell Comments in GN Docket No. 93-252 at 32.

[60] *See* California PUC Comments in GN Docket No. 93-252 at 11.

[61] Nextel Comments on MCI Petition at 7. Nextel Communications, Inc., was known as Fleet Call, Inc., when it filed its comments on the MCI Petition. For purposes of this *Notice*, we will refer to this commenter as Nextel.

all the customer's interexchange traffic.[62] PTC claims that the 10XXX access blocking prohibition of Section 226 of the Act, 47 U.S.C. § 226, does not ensure customer choice because not all cellular carriers are operator service providers or aggregators subject to that section.[63] PTC contends that if resellers are required to provide equal access, they cannot comply unless the Commission also requires the underlying facilities-based cellular carrier to provide equal access.[64]

24. **Detriments/Costs**: Cellular licensees and their industry association, CTIA, strenuously oppose the imposition of equal access requirements.[65] CTIA, McCaw, and other commenters argue that there is no legal basis for imposing equal access obligation on non-BOC cellular licensees.[66] Specifically, CTIA contends that equal access obligations were imposed pursuant to the *MFJ* for reasons that do not apply to mobile services. CTIA asserts that a key factor was that the BOCs' control over a "bottleneck" facility prevented customer access to the long distance service of their choice and IXC access to potential customers.[67] Comcast argues that the *MFJ* imposed equal access obligations on the BOCs to minimize their anticompetitive behavior, and asserts that since the independent cellular providers have no history of anticompetitive behavior and no bottleneck facilities, they should not be subject to equal access obligations.[68]

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[62] PTC Cellular Comments in GN Docket No. 93-252 at 13. PTC Cellular is a reseller of cellular telephone service primarily in conjunction with rental cars. PTC Cellular enters into agreements with rental car firms to install its credit card activated cellular phones in rental cars, and resells cellular service to the end-user. *Id.* at 1.

[63] PTC Cellular Comments in GN Docket No. 93-252 at 12. Section 226 codifies the Telephone Operator Consumer Services Information Act of 1991, (TOCSIA), 47 U.S.C. § 226.

[64] *Id.* at 11-12.

[65] *See e.g.,* CTIA Comments on MCI Petition at 2-14; McCaw Comments on MCI Petition at 32.

[66] *See* CTIA Comments on MCI Petition at 3-6; McCaw Comments on MCI Petition at 3 n.2, 6 & n.5; McCaw Comments in GN Docket No. 93-252 at 32. *See also* GTE Comments on MCI Petition at 3; GTE Comments in GN Docket No. 93-252 at 22; Comcast Comments in GN Docket No. 93-252 at 16.

[67] *See* CTIA Comments on MCI Petition at 4-5. *See also* McCaw Comments on MCI Petition at 6; Vanguard Comments on MCI Petition at 3; Centel Comments on MCI Petition at 3-5.

[68] Comcast Comments on MCI Petition at 8-12; Comcast Comments in GN Docket No. 93-252 at 16-17.

25. Opponents also argue that there is little consumer demand for equal access.[69] The Opposing Group, which includes several non-BOC cellular operators, contends rather that customers are more concerned with cellular service features, including coverage area, the ability to roam on other systems, high quality signal, and a reasonable total monthly bill.[70] Moreover, they argue, nonwireline cellular licensees are able to purchase interexchange service in bulk at lower rates than individual customers and can pass those savings on to their customers, thus keeping their basic service rates at acceptable levels.[71]

26. CTIA, Pacific and others argue that PCS providers should not be subject to equal access requirements.[72] Telocator contends that PCS providers need maximum flexibility to design their networks, package services, and provide cost effective services based on market demand. Telocator asserts that imposition of equal access requirements would inhibit this activity and would therefore be contrary to Commission goals in licensing these services.[73] OPASTCO asserts that equal access is an attractive, but unworkable, concept in the mobile arena. OPASTCO contends that equal access would impose costs and burdens on small operators that would harm rural subscribers.[74]

27. CTIA and Vanguard assert that the technical difficulties and costs of implementing equal access outweigh the benefits for consumers.[75] BMCT and the Opposing Group estimate that the necessary software upgrades, coupled with the costs of conducting a

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[69] *See e.g.*, Opposing Group Comments on MCI Petition at 4-6; McCaw Reply Comments on MCI Petition at 5; Comcast Comments on MCI Petition at 3.

[70] Opposing Group Comments on MCI Petition at 4-5.

[71] *See* Unity Comments on MCI Petition at 5-6, 8. *See also* Comcast Comments on MCI Petition at 7-8; McCaw Comments on MCI Petition at 12-13; McCaw Reply Comments on MCI Petition at 8; Vanguard Comments on MCI Petition at 2-3.

[72] *See* CTIA Reply Comments in GN Docket No. 93-252 at 21; Pacific/Nevada Comments in GN Docket No. 93-252 at 21-22; GTE Comments in GN Docket No. 93-252 at 22-23; Liberty Comments in GN Docket No. 93-252 at 2-3; TDS Comments in GN Docket No. 93-252 at 20-21.

[73] Telocator Comments in GN Docket No. 93-252 at 25.

[74] OPASTCO Comments on MCI Petition at 2-4, 5.

[75] *See* CTIA Comments on MCI Petition at 10-14; Vanguard Comments on MCI Petition at 4-6. *See also* Rochester Comments on MCI Petition at 5-6.

program of presubscription, outweigh any perceived benefits from customer choice.[76] Telocator claims that equal access obligations are unnecessary in a competitive marketplace, creating unjustified costs, consumer inconvenience, and inefficient networks.[77]

28. Several cellular providers express concern about the technical feasibility of converting equipment to provide equal access capabilities.[78] They insist that a requirement to upgrade existing cellular switches would force cellular carriers to purchase new switches. GTE and In-Flight complain that the technical limitations on air-to-ground service make equal access virtually impossible to implement.[79]

29. Vanguard contends that, like the payphone industry, the instances of fraud in the cellular marketplace is already serious.[80] Vanguard argues that users have fraudulently employed "cloned" cellular telephones to place a large volume of international calls, creating a serious problem. Vanguard argues that the Commission must consider the added implications for fraud as part of any decision to require cellular equal access for non-wireline carriers.[81]

2. Discussion

a. Equal Access Obligations in General

30. In assessing interconnection issues, which include equal access, we tentatively conclude that two initial questions must be addressed. The first is whether the Commission has

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[76] BMCT Comments on MCI Petition at 2-3; Opposing Group Comments on MCI Petition at 8-9.

[77] Telocator Comments in GN Docket No. 93-252 at 24-25.

[78] *See e.g.*, Illinois Valley Cellular Comments in GN Docket No. 93-252 at 3-4; Pacific Telecom Cellular Comments in GN Docket No. 93-252 at 3-4. *See also* GTE Comments in GN Docket No. 93-252 at 22-23 (equal access is too costly to implement); Liberty Comments in GN Docket No. 93-252 at 3-5 (equal access is too costly to implement).

[79] *See* GTE Comments in GN Docket No. 93-252 at 18 *citing* GTE Petition for Reconsideration, MSD 92-14 (filed Sept. 27, 1993); In-Flight Reply Comments in GN Docket No. 93-252 at 1-2.

[80] Vanguard Comments on MCI Petition at 4 *citing* Policies Concerning Operator Access and Pay Telephone Compensation, CC Docket No. 91-35, 7 FCC Rcd 4355 (1992) (Commission suspended the requirement for equal access from pay telephones and other call aggregator equipment because of the potential for fraud).

[81] *See* Vanguard Comments on MCI Petition at 3-4. *See also* MCI Reply Comments on MCI Petition at 19.

authority to impose equal access and interconnection requirements, and the second is whether the Commission should exercise this authority to impose such obligations on some or all CMRS providers. For the reasons discussed below, we tentatively conclude that the Commission has authority under Section 201 of the Communications Act to order equal access and that, in principle, the imposition of equal access obligations on at least some CMRS providers is in the public interest. We further tentatively conclude that the Commission should address the equal access question separately with respect to each of the various mobile services comprising the CMRS marketplace and should weigh several specific factors before deciding whether to impose an equal access obligation upon particular types of mobile service providers. We seek comment on these tentative conclusions, on each of the proposed criteria described below, and on any other factors that we should weigh in making this determination.

31. Legal Authority/Public Interest Analysis. We tentatively conclude that we possess the authority to order CMRS providers to provide equal access to IXCs under Section 201 of the Communications Act.[82] Section 201(a) imposes on every common carrier engaged in interstate or foreign communication by wire or radio the duty to furnish service upon reasonable request. Section 201(a) also authorizes the Commission, where necessary or desirable in the public interest, to order common carriers to establish physical connections with other carriers.[83] Thus, the question under Section 201(a) is whether the public interest would be served by the imposition of equal access obligations on CMRS providers.[84] We tentatively conclude that the answer to this question depends in part upon an analysis of the market power of the various CMRS providers, and in part on whether imposing equal access obligations would serve other policy goals the Commission has identified as serving the public interest with regard to the regulation of commercial mobile radio services. The *CMRS Second Report* stated that these goals include promoting the efficient provision of service to consumers at reasonable prices, establishing a regulatory structure that will foster competition, and promoting and achieving the broadest possible access to telecommunications networks and services by all telecommunications users.[85] We tentatively conclude that the public interest determination with respect to equal access should include both a market power analysis and analysis of whether equal access would promote these other policy goals. We seek comment on our tentative conclusions regarding the

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[82] *See* 47 U.S.C. § 201.

[83] 47 U.S.C. § 201(a).

[84] *See, e.g.*, Mid-Texas Communications v. American Telephone and Telegraph Company, 615 F.2d 1372, 1379 (5th Cir. 1980), *rehearing denied*, 618 F.2d 716, *cert. denied*, 459 U.S. 1145 (1981) (the Commission considers a number of specific noncompetition-related factors in determining the public interest in interconnection cases); Phonetele, Inc. v. American Telephone and Telegraph Company, 664 F.2d 716 (9th Cir. 1981), *cert. denied*, 459 U.S. 1145 (1981), *on subsequent appeal*, 889 F.2d 224 (9th Cir. 1989), *cert. denied*, __ U.S. __, 112 S.Ct. 1283 (1992).

[85] *CMRS Second Report*, 9 FCC Rcd at 1417-22.

relevant legal standard, and on the public interest criteria we have identified. In addition, commenters should identify any other relevant factors or policy goals they believe should be included in a public interest analysis under Section 201.

32. The presence or absence of market power is an important factor in determining whether the imposition of equal access obligations on CMRS providers may be in the public interest.[86] In the past, we have imposed interconnection obligations where the market was not sufficiently competitive to ensure that Commission goals of promoting consumer choice of carrier and competitive service offerings were attained. Carriers possessing market power might deny interconnection and thereby preclude another carrier from gaining access to the public switched network and competing to serve end users. Thus, for example, previously we have exercised this power to order common carriers to provide interconnection to specialized common carriers[87] and to require LECs to provide the type of interconnection requested by Part 22 licensees.[88] Similarly, we have determined that Section 201 provides the authority for Commission jurisdiction over the allocations of NXX codes and the requirement of "good faith" negotiations for the terms and conditions of cellular interconnection arrangements.[89] In each of these instances, market power was an important consideration in determining to impose interconnection obligations upon certain common carriers.

33. In the *CMRS Second Report*, the Commission found that all CMRS providers, other than cellular licensees, currently lack market power and found that it was appropriate to examine individually the prevailing climate of competition with respect to each of the various mobile services comprising the CMRS marketplace. In the case of cellular service, the Commission noted that it had previously acknowledged that while competition in the provision of cellular service exists, the Commission could not yet determine that cellular services were fully competitive. Nonetheless, we concluded that the current state of competition in the cellular marketplace did not preclude exercise of our forbearance authority and committed to initiate a further proceeding to examine the development of competition in the cellular marketplace.[90]

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[86] Market power has been defined by the Justice Department to mean "the ability profitably to maintain prices above competitive levels for a significant period of time . . . ." United States Department of Justice, Federal Trade Commission, "Horizontal Merger Guidelines," (Apr. 2, 1992), at 4 & n.6 (explaining that "[s]ellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation").

[87] *See* Specialized Common Carrier, Docket No. 18920, 29 FCC 2d 870 (1970); *recon.* 31 FCC 2d 1106 (1971); *aff'd.* 513 F.2d 1142 (D.C.Cir. 1975).

[88] Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd 2910, 2913 (1987) (*Interconnection Order*).

[89] *Interconnection Order,* at 2912-13. *See also* Section III, *infra.*

[90] *CMRS Second Report,* 9 FCC Rcd at 1467.

34. We recognize that the imposition of equal access obligations when the service provider does not possess market power may not be in the public interest. Such action can have unintended consequences which could detract from or undermine the potential benefits of imposing equal access. For example, the costs of implementing equal access may be so high that it could force some smaller carriers out of the market, thereby reducing competition. More importantly, competition alone in a particular market may compel carriers to offer choices their customers want without the need of regulatory intervention. Thus, depending on the market characteristics of particular commercial mobile radio services, the need for an equal access obligation may be lessened or altogether absent. Accordingly, we seek comment on the need for mandatory equal access based upon the degree of competition faced by the various commercial mobile radio services individually, and how that need balances against the other public interest costs and benefits we identify below.

b. Application to Cellular Service Providers

35. Based on the substantial record developed in response to the MCI petition for rulemaking, we tentatively conclude that we should impose equal access obligations on cellular providers.[91] We seek comment on this tentative decision and on the costs and benefits of equal access discussed below.

36. Benefits. We tentatively conclude that requiring cellular providers to offer equal access to IXCs has the potential of producing at least four significant benefits that are consistent with the public interest goals identified above. First, equal access will benefit consumers by increasing choice and perhaps lowering the price of the long distance services originating or terminating on their cellular systems. In a marketplace that may not be fully competitive, allowing individual customers to choose their IXC places the decision about interexchange services directly in the hands of the end user rather than the mobile carrier. Shifting this decision to the end user creates incentives for the IXC to compete on the basis of price and other service features offered to end users, rather than those offered to the mobile carrier. If the decision about interexchange services is made by the cellular carrier, an IXC has no direct incentive to meet the needs of end users. Further, in a less-than-fully competitive marketplace, without an equal access requirement IXCs that might otherwise compete for the end user's business either may not be able to compete for that business, or may be forced to convince the end user to change the cellular provider to receive that IXC's service.

37. Second, equal access obligations for cellular providers can increase access of end users and other telecommunications providers to networks. Equal access could expand the range of IXCs that consumers could choose, which could enhance the usefulness of communications services and foster increased network usage. This, in turn, spreads recovery of fixed costs over a greater number of minutes so that prices can be reduced. Interconnected networks also

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[91] This equal access obligation would apply to the BOC cellular affiliates regardless of whether the *MFJ* court, at some future date, eliminates its equal access requirements.

improve the variety of service offerings and spur innovation, which is beneficial to all users of communications networks. A network of networks has the additional benefit of promoting competition among network providers on the basis of quality of service and rates rather than their affiliation with other carriers.

38. Third, ubiquitous cellular equal access would permit IXCs to develop service offerings for discounted long distance service that, for example, combines all of a customer's long distance calling, including residential wireline and cellular usage. Reduced rates for such services should lead to increased demand and more efficient usage of existing networks. In addition, cellular equal access would also encourage competition in the development of other nationwide customized IXC services. Without ubiquitous cellular equal access, customers may be blocked in their ability to access an IXC-provided virtual private network service or information service when originating a call while roaming in a non-equal access service area. Thus, under equal access, all cellular customers would benefit by not being limited to the menu of services and options their local carrier chooses to provide. Such service offerings would likely result in the type of increased competition among IXCs to develop attractive discount plans that currently exists in the landline markets.

39. Fourth, adopting equal access for IXCs would appear to be consistent with the principle of regulatory parity underlying the recent statutory amendment, *i.e.*, regulating similarly situated cellular carriers consistently may require that we adopt equal access for all cellular providers. Bell Atlantic, BellSouth and others argue that until the *MFJ* court removes the equal access requirements for BOC cellular licensees, in the interest of parity, other wireless service providers should be obligated to comply with the same rules as the BOC affiliates.[92] Equal access obligations will continue in force for BOC-affiliated cellular providers under the *MFJ* until they obtain judicial relief or favorable legislative action. Under these circumstances, disparate treatment of different cellular carriers with respect to equal access obligations may be inconsistent with congressional intent and the Commission's efforts in the *CMRS Second Report* to reshape our regulatory structure to give CMRS providers the opportunity to compete under comparable rules. We note here that this may also be true for any potentially competing mobile services, including broadband PCS or wide-area SMR systems.

40. Costs. Notwithstanding these potential benefits, there are costs to imposing equal access obligations, particularly where existing networks must be reconfigured to accommodate the obligation. Cellular providers not currently subject to equal access obligations would have to modify software in their switches to route traffic to a customer's preferred IXC, and some might have to replace switches as well as software. In addition, some CMRS carriers might have to change the type of interconnection they take from LECs, *e.g.*, upgrade to Type 2

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[92] Bell Atlantic Comments in GN Docket No. 93-252 at 32-33; BellSouth Comments in GN Docket No. 93-252 at 34; Southwestern Comments in GN Docket No. 93-252 at 33.

interconnection, in order to implement equal access.[93] Moreover, substantial costs will be incurred to provide customer education and to establish and administer PIC selection processes and changes similar to those incurred in implementing landline equal access.

41. We also recognize the potential that certain economic efficiencies could be gained through vertical integration or bundling of services, and the potential that at least some of these would be lost if equal access is required. For example, McCaw and other cellular licensees argue that they are able to purchase interexchange service at bulk discounted rates and pass the savings onto their customers. If such efficiencies resulted in lower costs and therefore lower prices for end users, vertical integration could improve competition among cellular providers and among IXCs. It is not always clear, however, that lower costs for the cellular carrier necessarily translate into lower prices for the end user. Commenters who believe that such vertical integration serves the public interest are requested to provide specific data demonstrating the benefits for end users. We also recognize that with respect to bundling, if each of the bundled services is competitive, end users may not be precluded from choosing the service they want from other providers. Rather, it may provide consumers with benefits that disaggregated services would not.[94]

42. Weighing the Costs and Benefits. In the *CMRS Second Report* we found that there was insufficient evidence to conclude that the cellular marketplace was fully competitive, but concluded that it was sufficiently competitive to support the exercise of our forbearance authority.[95] For purposes of this analysis, we tentatively conclude that cellular consumers would benefit from the imposition of equal access obligations because such obligations would achieve the important public interest benefits described above. Cellular service is an established, rapidly growing service that provides many customers with alternative access to networks and services. Under equal access, cellular customers can potentially reap benefits through added choices of interexchange providers and new and innovative services. We tentatively conclude that the provision of equal access by cellular providers will produce substantial public interest benefits in the cellular services market by promoting customer choice and, consequently, competition in the interexchange marketplace, and that these benefits outweigh the potential costs. Unbundling cellular and interexchange services can lead to more accurate economic signals to consumers who can then make more rational purchasing decisions. We also find potential benefits in ensuring that cellular service is part of a network of networks, with consumers choosing the parts of the network they wish to use. We tentatively conclude that imposing equal access requirements on cellular providers would promote improved access to interexchange networks, and would have the benefit of regulating similarly situated carriers consistently. Thus, we tentatively propose to require cellular providers to offer exchange access service that is equal

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[93] For an explanation of the different types of interconnection see para. 105, *infra*.

[94] *See* Bundling of Cellular Customer Premises Equipment and Cellular Service, CC Docket No. 91-34, Report and Order, 7 FCC Rcd 4028 (1992).

[95] *CMRS Second Report*, 9 FCC Rcd at 1467.

in type, quality, and price to that provided to any IXC. We request comments on our tentative conclusion and on our cost-benefit analysis. We also request commenters to provide empirical cost information relevant to these determinations. Commenters should also address specifically whether the costs and benefits we have identified accurately portray today's marketplace, given that at least two new categories of service providers (wide-area SMR and broadband PCS) are poised to enter the CMRS market in the near future. Parties should also suggest what additional criteria we should consider in making our final determination.

43. We recognize that our preliminary analysis of the market position of cellular service assesses the current position of cellular service in the CMRS marketplace. With the advent of PCS, and the continuing development of wide-area SMR systems, cellular licensees will likely face many new competitors in the future. The current record does not thoroughly address the implications of developing competition for cellular service providers in the equal access context. We therefore seek comment on whether the advent of these new commercial mobile radio services should alter our tentative conclusion to impose equal access obligations on cellular providers.

c. Other Commercial Mobile Radio Services Providers

44. In the *CMRS Second Report*, we found that all CMRS providers other than cellular licensees currently lack market power.[96] In response to the *Notice,* the record supporting the *CMRS Second Report* garnered little commentary on whether service providers using PCS spectrum to offer commercial mobile radio service should be subject to equal access requirements.[97] We also have a very limited record regarding whether equal access obligations should be imposed on other CMRS providers, such as those that provide SMR service or improved mobile telephone services.[98] Thus, the record does not contain information sufficient to support a tentative conclusion regarding whether equal access obligations for other CMRS providers would serve the public interest. In this section, we discuss some of the issues raised by the commenters and seek further comment on whether equal access obligations for other CMRS providers would achieve the same public interest benefits we identified in the cellular context, given the different competitive situations and service characteristics of these other commercial mobile radio services.

45. Nextel has argued that there is no reason to require uniform treatment of non-cellular wireless providers, including SMR systems and wide-area SMRs, for equal access purposes,[99] because these carriers do not control a bottleneck. Nextel further asserts that

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[96] *Id.*

[97] *Id.* at 1493.

[98] For a list of those mobile services that constitute CMRS providers see para. 14, *supra*.

[99] Nextel Comments on MCI Petition at 5.

imposition of equal access burdens on its SMR systems would impose undue and unnecessary costs and administrative burdens on a start-up operation and would not, therefore, be in the public interest.[100] On the other hand, we believe that the service characteristics and capabilities of wide-area SMR systems will make them competitors to cellular providers, in which case considerations of regulatory parity might weigh in favor of imposing similar regulatory obligations should we ultimately impose equal access obligations on those providers. Similarly, broadband PCS holds the promise of being a full competitor for cellular service and a potentially effective substitute for the wired local loop. Thus, as we noted with respect to wide area SMRs, regulatory parity among providers of similar services might support imposing equal access obligations on broadband PCS providers.

46. Moreover, because these services are not yet fully developed, the costs of imposing the obligation would be lower than the costs of converting existing systems because carriers would not have to modify existing facilities to enable them to offer equal access; they could build this functionality into the network from the start. On the other hand, because PCS has not yet even been licensed for operation, we have little information about the competitive position PCS will hold in the marketplace. This is also true, albeit to a lesser extent, of wide-area SMR services which, although licensed, are fairly new. Because of this lack of marketplace experience, we believe caution requires that we impose no regulations before we fully understand the economic consequences of such an action. This is especially true in view of our observation that equal access obligations could impede possible economies of vertical integration, and may be unnecessary given our conclusion that broadband PCS and wide-area SMR providers lack market power.

47. With respect to paging services, we note that the *MFJ* court has determined that the BOCs' equal access obligations do not extend to paging affiliates.[101] The court determined that "the paging industry has developed independently of LATA boundary constraints" and that "in order to compete effectively in the paging market, paging services must be offered on an area-wide basis."[102] Given that paging is a one-way service, application of equal access does not seem relevant because the paging customer does not access an IXC's network. Rather, the paging carrier receives the call from the caller's chosen carrier and then sends the page to its customer. Paging services historically have been purchased as a single service, without separate charges for interstate and intrastate portions of the calls. We question whether, given this fact,

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[100] *Id.* at 7.

[101] *See* Memorandum and Order, United States v. Western Electric Co., No. 82-0192 (D.D.C. Feb. 16, 1989). *See also*, United States v. Western Electric Co., No. 82-0192 (D.D.C. June 20, 1986), at para. 4; United States v. Western Electric Co., No. 82-0192 (D.D.C. May 14, 1986), at 3; United States v. Western Electric Co., No. 82-0192 (D.D.C. Aug. 8, 1986), at 3; United States v. Western Electric Co., No. 82-0192 (D.D.C. Sept. 22, 1987), at 3; United States v. Western Electric Co., No. 82-0192 (D.D.C. June 16, 1988), at 3.

[102] United States v. Western Electric Co., No. 82-0192 (D.D.C. Feb. 16, 1989) at 4.

imposing an equal access obligation will benefit consumers sufficiently to alter this method of pricing. In addition, no commenter argues that paging or narrowband PCS, which is anticipated to consist largely of advanced paging and messaging services, should be subject to equal access obligations.[103] We seek comment on whether equal access obligations should be extended to paging carriers, or to narrowband PCS providers. We also seek comment on any technical differences that may distinguish these services sufficiently from other CMRS providers to justify a different regulatory treatment.

48. We seek further comment on the costs and benefits of imposing equal access obligations on all other CMRS providers, and all resellers of CMRS, including Part 22 public mobile services; Public Coast Stations; 220 MHz Private Land Mobile, except for internal use or when not interconnected with the public switched network; business radio service, except for internal use or when not interconnected with the public switched network; narrowband PCS; certain MSS;[104] and air-to-ground service.[105] We note that there is no indication of the extent to which these other CMRS systems pass traffic to or receive traffic from IXCs. Consequently, we seek market studies detailing the extent of such calling on these systems. We seek further comment on whether the technical limitations of other CMRS providers' networks would require significantly more burdensome network modifications to achieve equal access than would cellular.

49. In conclusion, we seek comment on these preliminary observations and on whether equal access obligations should be extended to any CMRS providers other than cellular carriers. Commenters should address the particularities of each of these commercial mobile radio services and on how the cost/benefit analysis we applied to cellular carriers or other analytical frameworks proposed by individual parties apply to these particular service characteristics. We also seek comment on the technical issues associated with requiring other CMRS providers to provide equal access. Commenters should provide information on: (1) existing methods of

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[103] *See* Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, First Report and Order, 8 FCC Rcd 7162, 7164 (*Narrowband PCS Order*), *recon.*, 9 FCC Rcd 1309 (1994) (*Narrowband PCS Reconsideration Order*).

[104] Given the nature of this service, and its broad coverage area, there is some question as to how an equal access obligation would be imposed.

[105] *See CMRS Second Report*, 9 FCC Rcd at 1443-1463, 1508. We note that we are also reviewing the ramifications of an equal access obligation for air-to-ground service providers as we decide whether TOCSIA obligations apply to air-to-ground providers. *See* 47 U.S.C. § 226. GTE has argued that air-to-ground carriers should be exempt from TOCSIA because, *inter alia*, they are unable to provide equal access. *See* Petition for Declaratory Ruling That GTE Airphone, GTE Railphone, and GTE Mobilnet Are Not Subject to TOCSIA, MSD-92-14, Declaratory Ruling, 8 FCC Rcd 6171 (Com.Car.Bur. 1993), *recon. pending*.

interconnection for all CMRS providers; and (2) technological modifications required for conversion to equal access for all CMRS providers.

C. Implementation of Equal Access Obligations

50. Equal access is defined under the *MFJ* as access that is "equal in type, quality, and price to that provided to AT&T and its affiliates."[106] The Commission used this definition in adopting rules to implement equal access for independent LECs.[107] Historically, equal access has included a program of presubscription, balloting and allocation procedures, technical interconnection standards, and the "1+" form of access for presubscribed lines, with 10XXX access for non-presubscribed access.[108] In its petition, MCI did not define the minimum requirements that the equal access obligation should entail. Given our tentative conclusion that equal access, in concept, should be extended to at least some CMRS providers, the next question is whether this requirement should include all of the essential elements of landline equal access. Several commenters have either raised issues concerning implementation or proposed elements that they argue should be part of any equal access obligation we might impose. We discuss these issues and proposals below. Commenters should address the following issues, as well as any other issues relevant to the implementation of equal access, and should comment on our tentative conclusions.

51. To the extent that commenters have already addressed the specific equal access requirements listed below, they have primarily discussed the implications of imposing equal access on cellular providers. Commenters should also address whether any of the equal access obligations described below should be adopted for other CMRS providers. In addition, parties should comment on whether the elements of the equal access obligation should be adapted to the technical or service parameters, or other specific circumstances of the service for which equal access is mandated.

1. Timing of Equal Access Conversion/Phase-in

52. Pursuant to the *MFJ*, the BOCs were required to convert their end offices to equal access gradually.[109] The BOCs were required to offer equal access from end offices serving at least one-third of their exchange access lines by September 1, 1985. The BOCs were also required to convert their remaining end offices to equal access, to the extent that there was a

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[106] 552 F.Supp. at 227.

[107] *See, e.g., Allocation Order*, 101 FCC 2d at 911.

[108] *See id.* at 924-927.

[109] *See MFJ*, 552 F.Supp. at 232-234.

bona fide request for such service, by September 1, 1986.[110] In considering whether to extend equal access obligations to the independent LECs, the Commission recognized that equal access obligations similar to those in the *MFJ* might be unreasonable, because independent LECs often served sparsely populated rural areas and were already high cost carriers.[111] Consequently, the Commission modified the BOC equal access implementation obligations to require the independent LECs to convert certain end offices within three years of a *bona fide* request for equal access service.[112]

a. Positions of the Parties

53. MCI, Sprint and USTA support a gradual implementation of equal access for cellular licensees.[113] Sprint indicates that, if necessary, it would accept a phased in equal access conversion over a period of years.[114] MCI contends, however, that the magnitude of the conversion task is smaller in cellular than in the case of the independent telephone companies. MCI further argues that the process of converting existing switches for equal access capability should be relatively easy.[115]

b. Discussion

54. We tentatively conclude that we should permit cellular and other CMRS licensees that may be subject to equal access requirements to phase in their implementation of equal access. Several commenters state that if the Commission should order equal access, switches would need to be upgraded or replaced. The type of network upgrades described by the commenters would appear to require significant infusion of capital and time to convert their systems. The comments indicate that these problems may be particularly acute for the smaller cellular carriers and for carriers in rural areas. We are concerned about the projected costs and potential disruption to network construction plans and attendant customer confusion. Parties are invited to comment on whether the timetable for the conversion process should be established separately for each service, and whether the implementation schedule should be tied to the size of the CMRS providers, or the size of the carrier's customer base. We also invite commenters to provide alternative proposals.

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[110] *Id.* at 232-233.

[111] *MTS/WATS Phase III Order*, 100 FCC 2d at 862-863.

[112] *Id.* at 875.

[113] MCI Reply to MCI Petition at 12-13; Sprint Comments on MCI Petition at 2; USTA Reply to MCI Petition at 4.

[114] Sprint Comments on MCI Petition at 2.

[115] MCI Reply Comments on MCI Petition at 13-14.

55. In the landline context, equal access for the independent LECs was initiated by a *bona fide* request for conversion submitted by an IXC.[116] We seek comment on whether any *bona fide* request for equal access from an IXC is sufficient to require a CMRS provider to convert to equal access, or whether we should establish a standard for when a CMRS provider would have the option to refuse to provide equal access. For example, if the cost of conversion is unreasonably high, would an alternative solution be to allow a CMRS provider to arrange with the LEC to provide the equal access service, rather than the CMRS provider. We seek comment on this, and any other means of phase-in that individual parties wish to propose.

2. Local Service Area/Point of Interconnection

56. We must first determine when the equal access obligations arises. As background, we first review the current service area definitions applicable to landline LECs and CMRS providers. We note that like intraLATA calling in the landline context, in-area toll calling would not be part of the equal access obligation.

a. Current Service Area Definitions

57. Our current understanding of what constitutes local, toll and interexchange calling reflects the service areas created by the interplay of the *MFJ*, the Commission's historic regulation of the LECs and the regulations of the state public utility commissions. As a condition of the *MFJ*, the BOCs are prohibited from carrying traffic outside their LATAs.[117] All calls that cross LATA boundaries, except where waivers have been granted, must be handed off to an interexchange carrier. The IXC interconnects with the local exchange network at its point of presence (POP) within the LATA. This interconnection enables the IXC to complete interexchange calls to and from any point within the LATA. The same structure applies to the BOC-affiliated cellular companies.

58. The Commission allocated spectrum for cellular radio telephone service in the mid-1970s,[118] and established the initial regulatory structure in the early 1980s.[119] There are two

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[116] *See* Section II, A, (1), *supra*.

[117] *See* Section II, A, *supra.*, at ¶12 and notes 25 and 26. *See also MFJ*, 552 F.Supp. at 232-234; United States v. Western Electric, 569 F.Supp. 990, 993-994 (D.D.C. 1983).

[118] An Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz; and Amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the Rules Relative to Operations in the Land Mobile Services Between 806 and 960 MHz, Docket No. 18262, Second Report and Order, 46 FCC 2d 752 (1974), *recon. granted in part*, 51 FCC 2d 945, *clarified*, 55 FCC 2d 771 (1975), *aff'd sub nom.* NARUC v. FCC, 525 F.2d 630 (1976), *cert. denied*, 425 U.S. 992 (1976).

cellular licensees, one licensee affiliated with a local exchange carrier (the wireline or Block B licensee), and one non-wireline licensee (Block A licensee), in each designated service area.[120] The cellular licensees were granted exclusive operating rights on their frequencies and within their service areas. The Commission adopted the Standard Metropolitan Statistical Area (SMSA or MSA) to define the area in which licensees could operate their systems, stipulating that it did not intend to limit any operator's service to a single MSA, and indicating that it would consider applications to enlarge the service areas it had prescribed by combining two or more MSAs.[121] Rural cellular service areas are known as Rural Service Areas (RSAs). The boundaries of the MSAs and RSAs often do not coincide with LATA boundaries. The *MFJ* court has issued several waivers permitting the BOCs to carry cellular traffic across some LATA boundaries.[122] BOC cellular affiliates interconnect with the IXCs at the cellular carrier's switch, called the mobile telephone switching office (MTSO), within the BOC-affiliated cellular licensee's MSA or RSA.

59. The Commission has determined that the service areas for broadband PCS

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[119] An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, CC Docket No. 79-318, Report and Order, 86 FCC 2d 469 (1981) (*Cellular Order*), *recon.*, 89 FCC 2d 58 (*Cellular Reconsideration Order*), *further recon.*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir., March 3, 1983).

[120] The wireline/nonwireline distinction only applied to the initial grant of a license. Either of these licensees could later be purchased by either LEC affiliates or independent companies after initial licensing, and often have been.

[121] *Cellular Reconsideration Order*, 89 FCC 2d at 86-88.

[122] *See, e.g.*, U.S. v. Western Electric Company, and AT&T, Civil Action No. 82-0192, (D.D.C., Feb. 18, 1993) (granting waiver to permit the BOCs to provide certain interexchange cellular services in RSAs). *See* United States v. Western Electric Co., Civil Action No. 82-0192 (HHG), Case Nos. 971 and 2416, 1990-2 Trade Cas. 64,447 (D.D.C., Sept. 12, 1990). *See also*, United States v. Western Electric Co., No. 82-0192, para. 8 (D.D.C., Feb. 26, 1986) (permitting PacTel acquisition of extraregional cellular operations subject to equal access obligations); United States v. Western Electric Co., No. 82-0192, para 5, (D.D.C., Oct. 31, 1986) (permitting BellSouth acquisition of controlling and minority interests in extraregional cellular operations and imposing equal access obligations upon those cellular operations in which BellSouth interest would have a substantial investment). Essentially, the current structure allows the BOC cellular affiliates to cross LATA boundaries so long as they stay within Commission-established MSA boundaries.

licensees will be Basic Trading Areas (BTAs) or Major Trading Areas (MTAs).[123] In the *Broadband PCS Order*, we determined that a combination of BTAs and MTAs would promote "the rapid deployment and ubiquitous coverage of PCS and a variety of services and providers," as MTAs and BTAs were designed based on the flow of commerce.[124] Noting the widespread consolidation of cellular operations in the MSA/RSA markets, we rejected the use of MSAs and RSAs in order to permit the initial licensing of larger service areas. We also concluded that large PCS service areas may, *inter alia*, facilitate regional and nationwide roaming and allow licensees to tailor their systems to the natural geographic dimensions of PCS markets.[125] The boundaries of MTAs and BTAs are adjacent to each other, with several BTAs making up one MTA. These boundaries, however, are often not coextensive with either LATAs or MSAs and RSAs.

60. SMRs and wide-area SMRs do not have designated "service areas." Rather, these licensees are authorized to construct and use a transmitter. Neither the SMR's license nor our rules specifically delimits a service coverage area.[126] Their service areas are defined by the effective propagation distance of their radio signals and are restricted by signal performance

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[123] Amendment to the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, 8 FCC Rcd 7700 (1993) (*Broadband PCS Order*), at ¶¶64-78; *recon.*, FCC 94-144, (released June 13, 1994). *See* Rand McNally, *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38-39 ("BTA/MTA Map"). Rand McNally organizes the 50 States and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection at the Office of Engineering and Technology's Technical Information Center, Room 7317, 2025 M Street, N.W., Washington, D.C. For PCS licensing purposes, we adopted service areas that separated Alaska from the Seattle MTA and added five insular areas: Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. In our rules, the insular areas are treated as five BTA service areas and three MTA service areas. *See* Section 99.102 of the Commission's rules. Additionally, the listing of counties, parishes and census divisions that comprise each BTA and MTA is also available for inspection at the Technical Information Center and was filed in GEN Docket No. 90-314 on February 15, 1994 by the Personal Communications Industry Association. (Note that this is a listing of Rand McNally's 47 MTAs and 487 BTAs. Thus the census divisions of Alaska are listed under the Seattle MTA, instead of separately in an Alaska MTA-like service area; and that the insular areas are not listed.) *See also Narrowband PCS Order*, 8 FCC Rcd 7162 (1993), *Narrowband PCS Reconsideration Order*, 9 FCC Rcd 1309 (1994).

[124] *Broadband PCS Order*, 8 FCC Rcd at 7732.

[125] *Id.*

[126] *See* Notice of Proposed Rule Making in PR Docket No. 93-144, 800 MHz Specialized Mobile Radio, 8 FCC Rcd 3950 (1993). *See also* First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 900 MHz Specialized Mobile Radio, 8 FCC Rcd 1469 (1993).

parameters and mileage separation rules between their tower and another carrier's tower. These areas are also often different from any of the other service area definitions discussed above.[127]

61. Furthermore, because CMRS providers other than the BOC-affiliated cellular companies, are not subject to the *MFJ*'s LATA boundaries, the non-wireline cellular licensees are not restricted in their provision of local and interexchange services. Consequently, their network architectures and their service area boundaries are driven by factors different from the BOC affiliates. For example, because McCaw is not currently bound by equal access obligations, it can offer statewide or regional calling plans for its customers, and is not required to hand off an interexchange call to an IXC.[128]

b. Positions of the Parties

62. GTE argues that establishing a local cellular service area for purposes of defining a carrier's equal access obligation is problematic.[129] Five BOCs (Ameritech, BellSouth, NYNEX, Pacific, and US West) assert that LATA boundaries are unsuited for purposes of defining local service areas and would prevent carriers from providing the type of regional coverage that the Commission has encouraged.[130] Bell Atlantic asserts that the BOCs have requested the Justice Department to support before the *MFJ* court a modified equal access plan that would substitute the Rand McNally Major Trading Areas (MTAs) for LATAs. Bell Atlantic argues that LATA boundaries are too small to reflect economically integrated wireless service areas, contending that MTAs would more closely match the markets that have evolved.[131]

63. Bell Atlantic supports equal access rules for the commercial mobile service industry that would require all providers to offer equal access to customers whose traffic crosses the borders of MTAs or another sensibly defined geographic area, if and when such areas become the basis for wireless equal access required under the *MFJ*. Until the Commission establishes uniform service areas for CMRS, Bell Atlantic and other BOC-affiliated cellular licensees argue that to assure parity among all CMRS providers, the Commission should define the wireless exchange areas for all CMRS licensees to be coterminous with the LATA

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[127] There is a proposal pending before the Commission to establish geographically defined service areas for SMR service. *See* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Further Notice of Proposed Rule Making, GN Docket No. 93-252, FCC No. 94-100 (Rel. May 20, 1994), at ¶¶ 29-38. *See also* note 127, *supra*.

[128] *See* McCaw Comments on MCI Petition at 9, 16-17.

[129] *See e.g.*, GTE Comments on MCI Petition at 7.

[130] RHC Comments on MCI Petition at 14-16.

[131] Bell Atlantic Comments in GN Docket No. 93-252 at 32.

boundaries established by the *MFJ* (as modified by any subsequent waivers) applicable to the BOCs.[132] Bell Atlantic claims that establishing a wholly different map of equal access areas for non-BOC CMRS providers and BOC providers would violate regulatory parity principles.[133]

64. Other commenters suggest that the local service area should be equivalent to the license area for each particular licensee.[134] Thus, for example, an IXC would interconnect with a PCS licensee at a point or points within the licensee's MTA or BTA, while interconnecting with a non-wireline cellular licensee at a point or points within the licensee's MSA or RSA. Bell Atlantic responds that this situation would be an administrative nightmare.[135]

c. Discussion

65. Although the local exchange services market is still dominated by LECs, competition is slowly beginning to emerge, in part from wireless services. We expect that trend to continue. In the access arena, the introduction of fiber technology has reduced the costs of providing local transport services and has allowed competition in transport to increase over the past few years. Specifically, a growing number of competitive access providers (CAPs), have begun to offer special and switched access services.[136] Cable companies may bring voice services to customers in the future. Given that both wired and wireless technologies will compete with each other, at least to some extent, we must consider whether the principle of regulatory parity requires a common definition of local service area for purposes of defining a CMRS provider's equal access obligation.

66. LATAs are well known local service areas, having been in existence for over ten years. The BOCs remain subject to LATA boundaries in their provision of equal access and argue that regulatory parity compels adoption of these boundaries for all CMRS providers subject to an equal access obligation. Other mobile providers, however, are not limited to providing wireless service within LATAs. Rather, unrestricted by the *MFJ*, their service offerings often include wide-area or regional calling, in response to customer demand. We tentatively find that the public interest would be disserved by a local service territory definition that impedes service offerings of mobile carriers, especially for wide-area service. Therefore,

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[132] Bell Atlantic Comments in GN Docket No. 93-252 at 32; NYNEX Comments in GN Docket No. 93-252 at 22 (supports Bell Atlantic's equal access plan).

[133] *Id.* at 33.

[134] *See, e.g.,* Ex Parte Letter in GN Docket No. 93-252 from Leonard S. Sawicki, Senior Manager, Regulatory Affairs, MCI, (Dated March 17, 1994).

[135] Bell Atlantic Comments in GN Docket No. 93-252 at 33.

[136] *See* "Federal Perspectives on Access Charge Reform: A Staff Analysis", Access Reform Task Force, (Aug. 3, 1993), at 17-18.

we are considering a flexible policy in defining service areas.

67. We tentatively conclude that we should adopt a service area boundary definition in order to determine where calls must be handed off, for purposes of the equal access obligation. We seek comment on what factors should guide the Commission in defining local service areas for cellular providers, or for any other CMRS provider that ultimately becomes subject to an equal access obligation. Bell Atlantic and the other BOCs have filed a waiver request with the *MFJ* court, seeking to replace LATAs with MTAs. Bell Atlantic proposes that the Commission adopt MTAs as the local service area. We seek comment on this proposal.

68. We also seek comment on whether local service areas should vary by the license area of the particular commercial mobile radio service. In particular, we seek comment on any administrative difficulties that might be associated with this approach. In the alternative, we seek comment on whether the local service area should be the same for all commercial mobile radio services, and if so, what that service area should be. Commenters should address the costs and benefits of each proposal.

69. A related question is whether CMRS providers should be required to permit IXCs to interconnect with their networks at more than one point within a given license or service area. Such a requirement could afford the IXCs greater flexibility in designing their networks. We seek comment on whether this policy should apply for equal access obligations imposed on CMRS providers. We seek comment on whether there must be a point of interconnection in every service territory, or whether CMRS providers should be permitted to backhaul the traffic to a POP outside the service territory.

70. We also recognize that there may be other "boundary lines" for determining the point at which the equal access obligation to hand a call off to the end user's IXC of choice arises. For example, equal access could mean that the cellular carrier is obligated to hand off all calls that cross a state boundary, in other words, the obligation would attach to all interstate cellular calls. Conceivably, this could be determined by the originating cellular system by reference to the area code of the terminating number. Alternatively, the equal access obligation could be structured in terms of the services for which an IXC is certificated to serve in a particular state. We seek comment on these proposals and on any other alternatives.

3. Technical Feasibility of Equal Access Interconnection

a. Positions of the Parties

71. Several cellular carriers argue that provision of equal access is technically difficult, if not impossible, for them to accomplish in many circumstances.[137] Unity claims that

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[137] *See, e.g.*, Unity Comments on MCI Petition at 6-8; Vanguard Comments on MCI Petition at 4-7; PMN Comments on MCI Petition at 5--6; Centel Cellular Comments on MCI Petition

only those cellular carriers with Type 2 interconnection, i.e., access tandem level interconnection, are able to provide equal access to interexchange carriers. In this configuration, explains Unity, the cellular carrier is identical to any LEC end office and can, if its MTSO is so configured and the necessary software purchased, provide equal access service. However, Unity explains, many cellular carriers, particularly in smaller MSA markets and RSAs, are unable to utilize Type 2 interconnection because many LEC type 2 offerings impose a monthly, mileage sensitive trunking charge between an MTSO and a tandem switch. This rate structure can make Type 2 interconnection prohibitively expensive if there is a significant distance between the cellular MTSO and the tandem switch. Unity maintains that cellular carriers using Type 1 interconnection lack the direct physical connection to access tandems required to receive equal access signalling information, and are therefore incapable of providing equal access services to IXCs. Even cellular carriers utilizing Type 2 interconnection may still be unable to provide equal access services because of the design of their MTSOs.[138]

72. Vanguard and PMN add that equal access would require them to acquire additional trunking facilities from each of their cellular switches to Class 4 Tandem offices (where IXC's interconnect with the LECs) serving each of their MSAs or RSAs. They also argue that they would need to add channel service units and upgrade the hardware and software in each of their switches.[139]

73. Centel Cellular argues that one of the weaknesses of the MCI proposal is its failure to describe the specific situations in which the equal access obligation should apply. Centel Cellular submits that in the cellular industry, interstate calls can arise in four distinct scenarios, and that equal access is impossible to implement in one case and is difficult and costly in the remaining three. Situation A arises where a cellular subscriber is engaged in a conversation in his home territory and crosses the state boundary, which usually requires the carrier to transfer the call to the system in the neighboring state, transforming the call into an interstate communication ("call hand-off"). Situation B occurs where a cellular subscriber is roaming in a foreign system and makes an interstate call. Situation C arises where a subscriber is roaming in a foreign system and receives a forwarded interstate call from his home system ("call delivery"). Finally, Situation D occurs when a cellular subscriber dials an interstate call in his home system.[140]

74. According to Centel Cellular, equal access in the call hand-off scenario described as Situation A is impossible because intersystem communications are currently too slow to enable

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at 8-12.

[138] Unity Comments on MCI Petition at 6-8.

[139] PMN Comments on MCI Petition at 5; Vanguard Comments on MCI Petition at 4-5. *See also* Unity Comments on MCI Petition at 7-8.

[140] Centel Cellular Comments on MCI Petition at 8.

a carrier to route the call to the customer's IXC of choice without dropping the call. In Situation B, Centel Cellular claims equal access is technically feasible if the foreign system can obtain a subscriber profile containing information regarding the subscriber's preferred IXC from the home system or the subscriber communicates his or her preference directly to the foreign system. It argues that automatic receipt of the profile can be achieved only if the IS-41 signalling protocol is in place. Centel Cellular explains that IS-41 permits the cellular switches of different manufacturers used in different markets to communicate with one another to permit the exchange of this sort of subscriber data. Alternatively, Centel Cellular offers, the subscriber could access his or her preferred IXC first by dialing 10XXX or by using a calling card capable of being used to bill interexchange calls. Finally, Centel Cellular maintains that in Situations C and D, equal access is feasible using current technology, although many existing switches currently lack equal access capabilities. In both these scenarios, calls passing through the home market switch, Centel Cellular explains, can be routed to the customer's preferred IXC if the switch contains the necessary software to enable equal access functionalities. Centel Cellular argues that in light of the foregoing, the Commission should require equal access only where a subscriber initiates a long distance call in his or her home system, or where a roamer initiates a call in a system using IS-41 technology. Further, Centel Cellular argues, equal access cannot be made to apply when call hand-off occurs.[141]

75. In meetings with Commission staff Southwestern raised an additional technical problem. Specifically, Southwestern expressed concern that equal access PIC routing technology will not work for packet switched data transmission using a least-cost routing methodology.[142]

b. Discussion

76. We tentatively conclude that equal access interconnection arrangements are technically feasible for terminating and originating most cellular interexchange calls because commenters indicate that software upgrades to MTSOs would permit them to offer equal access under most circumstances. We seek comment on the issues raised by Centel Cellular with respect to whether it is technically impossible to hand-off calls to the caller's preferred IXC under Situation A and whether there are any other technical limitations, or solutions, to the asserted problems relating to roaming. Commenters should address any special problems they believe that data transmission services pose for equal access implementation and how these problems should influence our final decisions and rules.

77. Compliance with equal access obligations may be less difficult and costly for CMRS providers that are not yet operational, *i.e.*, PCS providers, if we establish ground rules prior to construction of PCS systems. Other CMRS providers that are already operational,

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[141] *Id.* at 8-13.

[142] *See Ex Parte Letter* in GN Docket No. 93-252 from Michael W. Bennett, Director, Federal Regulatory, Southwestern Bell (Dated March 24, 1994).

however, may face technical problems like those described by Centel Cellular. We seek comment concerning the technical feasibility of equal access for CMRS providers other than cellular carriers.

4. Terms and Conditions of Interconnection

a. Positions of the Parties

78. Bell Atlantic argues that if equal access is imposed, each CMRS provider should offer IXCs the opportunity to interconnect with the CMRS provider either through a LEC access tandem connection or by direct connection to the CMRS carrier.[143] Bell Atlantic further contends that the Commission should prohibit a CMRS provider from discriminating between an interexchange service provided by the CMRS provider or its affiliate, and that provided by any other IXC in the: (a) establishment and dissemination of technical information and interconnection standards; and (b) interconnection and use of the CMRS providers' service and facilities; or (c) charges for each element of service. Finally, Bell Atlantic asserts that the Commission should require each CMRS provider to notify all IXCs on a nondiscriminatory basis of planned changes to existing network services or the addition of new services that affect the IXCs' interconnection with the CMRS provider's network.[144]

b. Discussion

79. We seek comment on whether in the event equal access obligations are imposed, CMRS providers should be required to permit IXCs to choose whether to interconnect with the CMRS provider through a LEC access tandem connection or by direct connection to the CMRS provider. Commenters should provide information concerning the costs of providing such interconnection. Because non-BOC CMRS providers are not prohibited from providing interexchange service, we tentatively conclude that to promote fair competition the Commission should ensure that competing interexchange carriers can interconnect with CMRS providers on the same terms and conditions as interexchange services provided by the mobile carriers themselves, that the CMRS providers not discriminate unreasonably against unaffiliated IXCs, and that the CMRS providers notify IXCs in advance of any network changes likely to affect their service. Commenters should address this tentative conclusion and specify rules regarding how this requirement can be implemented.

5. "1+" Form of Access

80. LECs under equal access obligations have had to open their networks to provide the same service options to all interested carriers. The four different types of connections that

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[143] Bell Atlantic Comments in GN Docket No. 93-252 at 33.

[144] *Id.* at 34.

the long-distance carriers could buy from the pre-divestiture Bell System evolved over time into the four standardized feature groups: Feature Groups A, B, C, and D. Feature Group A provides carriers with line-side connections to the local end office and a local 7-digit access number. Feature Group B provides carriers with a trunkside connection to the local switch and a 950-XXXX access number. Feature Group C, available to AT&T only, provides trunkside connection and "1+" access. Feature Group D provides every carrier with a trunkside connection, with "1+" access, and a 10XXX access code to reach the customer's carrier of choice when dialing from a telephone that is not presubscribed to the customer's preferred carrier.

81. The *MFJ* court noted that at divestiture, customers using AT&T were only required to dial a total of ten or eleven digits. On the other hand, customers of other interexchange carriers were required to dial as many as twenty-two digits. Noting the negative impact of this disparity on competition, the *MFJ* required the BOCs to provide to competing IXCs the same dialing access it provided to AT&T.[145] The Commission agreed, determining that all LECs should provide direct customer access, *i.e.*, 1+ , or access without use of an access code.[146]

a. Positions of the Parties

82. Some commenters argue that 10XXX alone, without providing "1+" access, satisfies the equal access requirement.[147] GTE contends cellular customers can make an interexchange call through GTE's cellular system in several ways, including the dial 1+ option. GTE asserts that the customer may also dial an 800 or 950 number provided by the IXC, and the call will be handled and billed by the chosen IXC. In this way, contends GTE, customer choice is protected.[148]

83. Allnet argues that all customers should be given the freedom to choose an interexchange carrier without any dialing impediment.[149] MCI contends that individual customers should have the ability to access the IXC of their choice as easily as they do when making landline calls. Customer options for 1+ dialing should not be limited to the IXC chosen

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[145] *MFJ*, 552 F.Supp. at 197-198.

[146] *MTS/WATS Phase III Order*, 100 FCC 2d at 876.

[147] *See* GTE Comments on MCI Petition at 5; GTE Reply Comments on MCI Petition at 4; SNET Comments on MCI Petition at 5-6; McCaw Reply Comments on MCI Petition at 5,7; Cellwave Comments on MCI Petition at 4.

[148] GTE Comments on MCI Petition at 5.

[149] Allnet Comments on MCI Petition at 2.

by the cellular licensee.[150]

b. Discussion

84. Direct or "1+" access was the type of access the BOCs provided to AT&T at divestiture. This form of access allows "1 + " calls to be routed to the interexchange carrier's facilities.[151] The Commission ordered the LECs to provide this form of access to a customer's primary interexchange carrier. This is the simplest and best-known form of access.

85. We tentatively conclude that the equal access obligation should include the provision of 1+ access or other abbreviated forms of nondiscriminatory access to the mobile customer's chosen interexchange carrier. We seek comment on this conclusion. We also seek comment on whether using access codes, such as 10XXX codes or 800 numbers would be sufficient, under certain circumstances, to provide equal access.

6. Presubscription, Balloting and Allocation

86. The Commission implemented the Balloting and Allocation Plan in 1985.[152] This plan required the LECs to notify the IXCs of an end office conversion six months prior to the scheduled conversion date. This plan also: provided that the LEC would notify end user customers that an end office was being converted to equal access through mailing of an equal access ballot approximately 90 days before the conversion date, with a second ballot following approximately 50 days prior to conversion; established a letter of agency (LOA) procedure to permit IXCs to submit orders on behalf of customers who agreed to use their services; established presubscription change charges that applied after an initial free selection; required the LECs to establish clear procedures to resolve disputes regarding the end user's selection of an IXC; set carrier participation requirements; directed LECs to process IXC-submitted lists of customers that have made arrangements with a specific IXC to designate that IXC as their primary long distance carrier; and directed that customers who did not select an IXC be allocated to carriers participating in the balloting process in proportion to the number of customers who had selected the carrier in the balloting process.[153]

87. Since the Commission adopted the original Balloting and Allocation Plan, we have

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[150] MCI Reply Comments on MCI Petition at 3.

[151] *See* Administration of the North American Numbering Plan, CC Docket No. 92-237, Phases One and Two, Notice of Proposed Rule Making, 9 FCC Rcd 2068, 2075-76, ¶46 (1994).

[152] Balloting is the part of the presubscription process occurring when LECs send customers ballots on which they select their primary IXC. *See Allocation Order*, 101 FCC 2d at 924-927; Appendix B.

[153] *Allocation Order*, at Appendix B.

refined certain elements of the plan. Among other things, we permitted IXCs to submit orders to LECs on behalf of customers without first possessing a letter of agency from the customer designating that IXC as his or her selection, provided they make good faith efforts to obtain such an LOA. We permitted LECs to adopt methods of dispute resolution if a customer disputed which IXC it had selected.[154] We emphasized the role of the LEC in resolving questions about unauthorized changes in service.[155] In the 1992 *PIC Verification Order*, we adopted further protection for consumers against telemarketing abuses of the IXC selection process.[156]

a. Positions of the Parties

88. Bell Atlantic argues that to implement equal access, the Commission should also establish safeguards designed to ensure that customers of commercial mobile radio services are offered a genuine choice among competing interexchange carriers. Bell Atlantic proposes several rules to ensure informed customer choice. Specifically, Bell Atlantic proposes that all existing and new customers of CMRS providers be sent a ballot and asked to choose an interexchange carrier from among participating interexchange carriers. Bell Atlantic would require that each CMRS provider list the interexchange carriers in a nondiscriminatory manner and periodically rotate the listing on a nondiscriminatory basis to ensure that each interexchange carrier has an equal chance of being listed at the top of the ballot. Further, Bell Atlantic suggests that customers who fail to choose an interexchange carrier be allocated among interexchange carriers in the same proportion as the IXCs that customers selected through their ballots.[157]

89. In addition, Bell Atlantic argues that joint marketing rules should be imposed to ensure that CMRS providers do not steer customers to their own long distance service.[158] Specifically, each CMRS provider would be required to inform each new CMRS customer that he or she has a choice of interexchange carriers.[159] In the event that a customer requests additional information, the CMRS carrier would provide the customer, on a nondiscriminatory basis with any literature provided by, or with the telephone number of, the interexchange carrier or carriers about which the customer has requested more information. Direct marketing of the CMRS provider's interexchange service to its customers would be permitted so long as the

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[154] *See Allocation Order*, 101 FCC 2d 911 (1985).

[155] *See* Illinois Citizens Utility Board Petition for Rule Making, Memorandum Opinion and Order, 2 FCC Rcd 1726 (Com.Car.Bur. 1987).

[156] *See e.g., PIC Verification Order*, 7 FCC Rcd 1038 (1992).

[157] Bell Atlantic Comments in GN Docket No. 93-252 at 34.

[158] *Id.*

[159] *Id.* at 35.

CMRS provider makes its customer lists, including names, addresses and mobile numbers available to unaffiliated interexchange carriers. The unaffiliated carrier must agree that it will use the information only to market that carrier's interexchange services to the CMRS provider's customers.[160]

90. MCI suggests that the Commission's equal access requirements for commercial mobile service providers should be based upon existing LEC rules, but need not be identical. MCI proposes that the Commission permit joint marketing of local CMRS and long distance services by CMRS providers and require all CMRS providers to give their customers access to the long distance provider of the customer's choice, at the customer's request.[161]

b. Discussion

91. We note that AT&T does not have the same historical relationship with carriers in the CMRS marketplace that it enjoyed with LECs in the wireline marketplace. This is particularly true in the case of PCS, which is not yet operational. Because, however, the balloting process requires LECs to furnish certain information to consumers in an impartial manner, it ensures that all end users have the information needed to make an informed choice of interexchange carriers.

92. We tentatively conclude that we should impose presubscription and balloting rules for cellular providers similar in scope to those proposed by Bell Atlantic. Commenters should address this tentative conclusion and should suggest any changes or additions they believe necessary to conform these rules to the CMRS marketplace. We seek comment on whether allocation is necessary, given the differences between LECs and CMRS providers, and the absence of a relationship like that existing between AT&T and the BOCs before divestiture. In addition, we seek comment on whether the rules governing changes in PICs that currently apply to wireline carriers should apply to cellular operators. We seek further comment on whether any of these proposed rules should apply to any CMRS provider in the event that the Commission decides to extend equal access obligations to other CMRS providers.

7. Cost Recovery

93. In the *MTS/WATS* proceeding, the Commission permitted the LECs to identify and recover certain costs incurred in the conversion to equal access.[162] The Commission permitted the landline LECs to recover such costs through a conversion charge assessed on interexchange

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[160] *Id.*

[161] MCI Comments in GN Docket No. 93-252 at 12.

[162] *See* MTS and WATS Market Structure, Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Costs, CC Docket No. 78-72, 4 FCC Rcd 2104 (1989).

carriers.[163] The Commission recently determined that the CMRS marketplace is sufficiently competitive to support forbearance from a tariff filing requirement for CMRS interstate access service.[164] It should be noted, however, that in the *Interconnection Order*, the Commission stated that cellular carriers are entitled to just and reasonable compensation for their provision of access.[165]

a. Positions of the Parties

94. Most cellular carriers express concern about their ability to recover the costs of equal access conversion.[166] GTE argues that the Commission must address the question of who should pay the equal access conversion charge.[167] Dobson and GTE ask whether cellular licensees will be entitled to recover access fees for the origination and/or termination of traffic to the IXCs if the Commission imposes equal access.[168] Unity argues that if equal access is imposed the Commission should create an equal access recovery and access charge structure similar to that found in comparable LEC state and interstate tariffs.[169]

b. Discussion

95. We tentatively conclude that CMRS providers should be able to recover their reasonable costs of conversion through a conversion charge assessed either upon their equal access interexchange customers or end users. Historically, we have not found a need for federal intervention with respect to cost recovery issues for common carrier mobile service providers. At a minimum, however, any charge would need to be assessed against all IXCs and end users in order to prevent unreasonable discrimination. We ask whether we need to adopt any policy or rules for cost recovery of equal access conversion costs by CMRS providers. We also seek comment on whether we should mandate the method by which these costs of service are recovered. Commenters supporting such action should propose methods of cost recovery.

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[163] *See* 47 C.F.R. § 69.107.

[164] *CMRS Second Report*, 9 FCC Rcd at 1478-1480.

[165] *Interconnection Order*, 2 FCC Rcd at 2915.

[166] *See e.g.*, CTIA Comments on MCI Petition at 10-11; Horizon Reply Comments on MCI Petition at 4.

[167] GTE Reply Comments on MCI Petition at 9.

[168] *See* Dobson Comments on MCI Petition at 5 n.4; GTE Reply Comments on MCI Petition at 9-10.

[169] Unity Comments on MCI Petition at 9.

8. Billing and Collection/Customer Database Access

96. We have previously determined that LEC billing and collection services for non-affiliated IXCs should not be regulated as a common carrier service under Title II of the Communications Act. We therefore required the LECs to "detariff" billing and collection services.[170] The Commission reasoned, *inter alia*, that it need not exercise its ancillary jurisdiction under Title I over the LEC's provision of billing and collection services because there were no barriers to entry in the billing and collection market. The Commission qualified its finding by noting that a "potential bottleneck in this respect is an I[X]C's or billing vendor's inability to get customer name and address information from the LEC."[171] Despite our deregulation of LEC billing and collection services, we have subsequently required the LECs to offer telecommunications service providers some information those providers need to bill when customers using their services charge them to a LEC joint use calling card, a third party or on a collect basis. This information includes LEC card validation, line screening and BNA data, which we have required LECs to offer under tariff.[172] In the *BNA Order*, we found that the provision of LEC BNA data was essential to enable IXCs that did not have billing and collection agreements with the LECs to do their own billing for services provided.[173]

a. Positions of the Parties

97. MCI requests that the Commission address the issue of IXC access to cellular databases to permit IXCs to locate their customers (either in their home systems or when roaming) and to route calls to the appropriate destination. MCI explains that in the cellular context, "destination" should be construed broadly, to include all call-routing and call-handling options available to the cellular customer via cellular, LEC or IXC networks. According to MCI, these would include routing of calls to other cellular and landline telephones; to fax machines, pagers or voice mail; and other call screening and call delivery options that may be

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[170] See Detariffing of Billing and Collection Services, 102 FCC 2d 1150 (1986) (*Detariffing Order*); see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, 7 FCC Rcd 3528, 3533 n. 50 (1992) (*Validation Order*) (*recon. pending*).

[171] *Detariffing Order*, 102 FCC 2d at 1171 n.53.

[172] *See Validation Order*, 7 FCC Rcd 3528; Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket 91-115, 8 FCC Rcd 4478, 4482 (1993) (*BNA Order*); *recon.*, 8 FCC Rcd 8798 *(1993) (BNA Reconsideration Order*) (*recon. pending*). Recognizing the sensitive privacy issues related to BNA information, the Commission established specific requirements to protect against the misuse and unauthorized dissemination of this information. *See BNA Order*, 8 FCC Rcd at 4482-87; *BNA Reconsideration Order*, 8 FCC Rcd at 8804-8810.

[173] *BNA Order*, 8 FCC Rcd at 4482.

designated in a "customer profile" maintained by the cellular carrier in a database and associated with the IXC's customer's cellular account or cellular instrument.[174]

98. AT&T argues that the Commission should examine the unique billing and collection problems that might arise when calls originate on a cellular system. AT&T and MCI assert that the cellular carrier is the sole source of billing name and address (BNA) information, and the only entity that can ensure a correct match between call data (such as mobile identification number and the date and time of a call) and the customer account.[175] BNA information, claims AT&T, is quickly outdated for cellular customers because the shortage of mobile telephone numbers requires cellular carriers to reassign immediately numbers from former customers to new customers.[176] AT&T argues that the Commission should consider whether cellular carriers should be required to offer, on reasonable terms and conditions, "all information needed by IXCs to bill their interexchange customers." AT&T also suggests that the Commission consider requiring cellular carriers to provide billing and collection services on a reasonable and nondiscriminatory basis until they make this information available or until IXCs develop the systems needed to make use of cellular billing information.[177] MCI proposes that the Commission require cellular licensees to include a uniform identifier for cellular-originated long-distance calls, possibly by the addition of "information indicator" digits to the "automatic number identification" (ANI) data transmitted with the call, so that IXCs can route and bill the calls appropriately.[178]

b. Discussion

99. Although cellular carriers may not control a bottleneck to local access service, they, like the landline LECs, may be the sole source of certain information necessary for the correct and accurate billing and collection of interexchange calls originating on their networks. Therefore, we specifically seek comment on our jurisdiction over cellular billing and collection services. We also seek comment on whether cellular carriers should be required to offer, pursuant to Title II and on reasonable and non-discriminatory terms and conditions, all information interexchange carriers need to bill their interexchange customer, including ANI information, call detail reports and cellular BNA data. Commenters should address whether such billing-related data should be provided under contract or by tariff. We also seek comment on AT&T's suggestion that we require cellular carriers to provide billing and collection services

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[174] MCI Reply to MCI Petition at 19 n. 20.

[175] AT&T Comments on MCI Petition at 5, n.8; MCI Reply Comments on MCI Petition at 19, n.19.

[176] AT&T Comments on MCI Petition at 5, n.8.

[177] *Id.* at 5. *See also* MCI Reply Comments on MCI Petition at 19.

[178] MCI Reply Comments on MCI Petition at 19 n.19.

to IXCs on a reasonable and nondiscriminatory basis until they make adequate billing-related data available. In addition, we seek comment on these issues with respect to any other CMRS provider.

100. We also seek comment on the issue of IXC access to any cellular call screening, routing and delivery data that may be designated in a "customer profile" maintained in a cellular carrier's database and associated with the IXC's customer's cellular account or cellular instrument. Commenters should address the need for such access, the method by which such data should be provided and our jurisdiction over such cellular account databases.

III. INTERCONNECTION

101. In the *CMRS Second Report*, the Commission announced that it would address in a further proceeding several issues regarding the interconnection obligations of LECs to CMRS providers and CMRS providers to one another.[179] In Section A, we propose rules to govern LEC-to-CMRS provider interconnection obligations. In Section B, we begin an inquiry designed to gather information on technical developments concerning CMRS-to-CMRS interconnection protocols, procedures, and facilities, to explore the significance of these developments in the CMRS environment, and to seek comment on the appropriate role of Commission regulation to foster interconnection between new service providers in the mobile telecommunications marketplace, consistent with goals and policies announced in the *CMRS Second Report*.

A. Proposed Rules Regarding Interconnection Obligations of Local Exchange Carriers

1. Current Requirements

102. The nature of the LECs' interconnection obligations to wireless carriers was first examined when the Commission licensed cellular service in the early 1980s. In the *Cellular Report and Order*, the Commission required the BOCs to furnish interconnection to cellular systems upon terms "no less favorable than those offered to the cellular systems of affiliated entities or independent telephone companies."[180] This obligation also extends to private carriers.[181] The period following the Commission's early licensing of cellular service was marked, however, by difficult negotiations between LECs and cellular licensees. Further, at divestiture the BOCs renegotiated their arrangements with private carriers. For a time, several BOCs refused to provide trunkside interconnection to nonwireline carriers.

103. The continuing problems caused parties to petition the Commission to intercede.

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[179] *See CMRS Second Report*, 9 FCC Rcd at 1498-1501; 1514-1515.

[180] 86 FCC 2d at 496.

[181] *See, e.g., CMRS Second Report*, 9 FCC Rcd at 1500 & n. 484.

In response, the Commission issued a policy statement on cellular interconnection in 1986.[182] In the *Policy Statement*, the Commission outlined its interconnection standard, which requires all local telephone companies to provide: (1) the type of interconnection the mobile carrier requested; (2) interconnection to the nonwireline carrier that is not less favorable than that furnished to its affiliated wireline cellular carrier; and (3) reasonable interconnection arrangements with the nonwireline carrier that may not be the same as those used by the wireline cellular carrier.[183]

104. The Commission refined its framework for LEC provision of interconnection to cellular licensees in the *Interconnection Order*.[184] The Commission reaffirmed the [requirements] articulated in the *Policy Statement* and ordered the LECs to negotiate the terms and conditions of interconnection with cellular carriers and required these negotiations to be conducted in good faith.[185] The Commission stated that it expected the agreements to be concluded without delay, noting that a cellular carrier having difficulty obtaining a good faith agreement may file a complaint before the Commission under Section 208 or 312 of the Act.[186] We concluded that the Commission has plenary jurisdiction over the physical plant used in the interconnection of cellular carriers and we preempted state regulation of physical interconnection facilities. We found, however, that a LEC's rates for interconnection are severable because the underlying costs are segregable. Therefore, we declined to preempt state regulation of a LEC's rates for intrastate interconnection. The Commission recognized, however, that charges for the intrastate component of interconnection that are so high as to effectively preclude interconnection would negate our decision to permit interconnection, thus potentially warranting our preemption of some aspects of particular intrastate rate regulation.[187]

105. LECs are currently obligated to provide three basic types of interconnection to CMRS providers. Type 1 service involves interconnection to a telephone company end office similar to that provided by a local exchange carrier to a private branch exchange (PBX). Type 1 interconnection involves an end office connection that combines features of line-side and trunk-side connections and uses trunk-side signalling protocols. Type 1 interconnections enable the CMRS provider to access any working telephone number, including all NXX codes within the

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[182] *See* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad.Reg.2d (P & F) 1275 (1986) (*Policy Statement*).

[183] *Policy Statement*, 59 Rad.Reg.2d at 1283-84 *citing Cellular Reconsideration Order*, 89 FCC 2d at 81-82; *Cellular Order*, 86 FCC 2d at 495-96.

[184] *Interconnection Order*, 2 FCC Rcd at 2913.

[185] *Id.* at 2912-2913, 2916.

[186] *Id.* at 2916.

[187] *Id.* at 2912.

LATA of the LEC providing the interconnection. The Type 1 connection also permits access to Directory Assistance, N11 codes, and service access codes. Type 2A connections give the CMRS carrier the ability to connect to the Public Switched Network in the same manner as any wireline carrier. The connections, which may be either solely to access tandems or to a combination of tandems and other central offices, are true trunk-side connections using trunk-side signalling protocols. Type 2A connections do not permit access to LEC operator services or N11 codes. Type 2B connections are trunk-side connections to an end office that operate in the same manner as high-usage trunks. Under Type 2B interconnection, the CMRS provider's primary traffic route is the Type 2B connection, with any overflow traffic routed through a Type 2A connection. Type 2B interconnection permits access to valid NXX codes, but cannot access operator services or N11 codes.[188]

106. In the *CMRS Second Report*, the Commission classified all mobile radio services as either commercial mobile radio service (CMRS) or private mobile radio service (PMRS).[189] The Commission concluded, *inter alia*, that LECs should have an obligation to offer interconnection reasonably requested by any CMRS provider and stated that LECs bear the burden of demonstrating why a denial of a reasonable request for service from any PMRS provider is not a violation of Sections 201(a), 201(b), and 202(a).[190] We also preempted any state regulation of the good faith negotiation of the terms and conditions of interconnection between LECs and CMRS providers. We further determined that costs associated with the provision of interconnection for interstate and intrastate service are segregable and did not preempt state regulation of LEC intrastate interconnection rates for CMRS and PMRS providers.[191]

107. The Commission also extended to all CMRS providers several interconnection requirements that LECs currently must satisfy when dealing with cellular and PMRS providers. First, the principle of mutual compensation applies between landline LECs and CMRS providers. That is, LECs must compensate CMRS providers for the reasonable costs they incurred in

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[188] *See generally* The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 4 FCC Rcd 2369, 2377 n.16 (1989)(*Cellular Interconnection Order*), *aff'g Interconnection Order*, 2 FCC Rcd 2910 (1987) (Commission adopted policy statement rather than specific rules because of existence of a variety of interconnection arrangements and system designs). *Cf. CMRS Second Report*, 9 FCC Rcd at 1498.

[189] *See CMRS Second Report*, 9 FCC Rcd 1411 (1994). Section 332 defines CMRS as "any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public." Communications Act, § 332 (d)(1), 47 U.S.C. § 332 (d)(1).

[190] *CMRS Second Report*, 9 FCC Rcd at 1497-1499.

[191] *Id.* at 1497, 1501.

terminating traffic that originates on LEC networks. CMRS providers are also required to compensate LECs for mobile-originated traffic terminating on LEC facilities.[192] Second, LECs are required to establish reasonable charges for interstate interconnection provided to CMRS providers. Third, LECs may not deny CMRS providers any form of interconnection that the LEC makes available to any other carrier or other customer, unless the LEC demonstrates that the requested interconnection either is not technically feasible or is not economically reasonable.[193]

108. The Commission, to date, has not required the interstate services portion of these interconnection arrangements to be tariffed.[194] In the *Policy Statement*, the Commission reasoned that because cellular carriers were primarily engaged in the provision of "local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern."[195] The Commission further determined that these arrangements "are properly the subject of negotiations between the carriers as well as state regulatory jurisdiction."[196] The intrastate services portion of these arrangements are sometimes offered solely through contracts, but are sometimes filed in state tariffs. Because these arrangements are not filed with the Commission, the details of the arrangements are not known. Some LECs have apparently offered interconnection services for interstate mobile services pursuant to state tariffs or contracts filed with state public utility commissions. Because of the concerns raised by some commenters, the Commission committed to explore whether interstate interconnection arrangements could continue to be established on the basis of individually negotiated contract, as is currently the case, or whether we should require the LECs to file tariffs.[197]

2. Positions of the Parties

109. Cox and Pagemart argue that requiring LECs to file interconnection tariffs will

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[192] *See CMRS Second Report*, 9 FCC Rcd at 1498, *citing Interconnection Order*, 2 FCC Rcd at 2915. The Commission had earlier determined that cellular carriers are common carriers generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone companies and therefore "co-carriers" with the telephone companies. *Policy Statement*, 59 Rad.Reg. 2d at 1278, 1284 *citing Cellular Reconsideration Order*, 89 FCC 2d at 81-82; *Cellular Order*, 86 FCC 2d at 495-96.

[193] *CMRS Second Report*, 9 FCC Rcd at 1498.

[194] *See Interconnection Order*, 2 FCC Rcd at 2916.

[195] *Policy Statement*, 59 Rad.Reg. 2d at 1284.

[196] *Id.* at 1285.

[197] *CMRS Second Report*, 9 FCC Rcd at 1498-99.

be critical to the development of PCS systems.[198] Pagemart claims that tariffs will be particularly important in areas where the LEC directly competes with a new PCS system, *e.g.*, where the LEC offers competing PCS or cellular service.[199] Comcast and Cox contend that rather than tariffing interconnection service, the Commission should order the LECs to file with the Commission sufficient information, such as intrastate interconnection tariffs and all contracts for interconnection and billing and collection services, to ensure that the full scope of applicable charges and service conditions can be ascertained and that there is no unreasonable discrimination.[200] Comcast argues that this approach will enable the Commission and CMRS providers to review relevant information to determine that intrastate interconnection rates are not frustrating the federal policy.[201]

110. In the *CMRS Proceeding*, commenters expressed dissatisfaction with the current system of good faith negotiations, yet few embraced tariffing as the solution.[202] MCI argues that the Commission should "go beyond a simple extension of existing cellular interconnection policies" to all CMRS providers.[203] MCI expresses concern that the dominant LECs and their affiliates will manipulate the interconnection process to the disadvantage of PCS licensees.[204]

111. Pacific opposes requiring LECs to file interstate interconnection tariffs, arguing that the Commission left the decision of whether to tariff cellular interconnection rates to the states. Pacific asserts that there is no reason for treating PCS interconnection differently.[205] US West and GTE argue that the current interconnection framework provides relative certainty as to the respective rights of carriers and offers carriers the flexibility to negotiate specific

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[198] Cox Comments in GN Docket No. 93-252 at 5; Pagemart Comments in GN Docket No. 93-252 at 19.

[199] Pagemart Comments in GN Docket No. 93-252 at 19.

[200] Comcast Comments in GN Docket No. 93-252 at 11-12; Cox Comments in GN Docket No. 93-252 at 6.

[201] Comcast Comments in GN Docket No. 93-252 at 12.

[202] *See* MCI Reply Comments in GN Docket No. 93-252 at 2-3. *See also* CTP Comments in GN Docket No. 93-252 at 1-2; Cox Comments in GN Docket No. 93-252 at 2-3; Comcast Comments in GN Docket No. 93-252 at 8.

[203] *See* MCI Reply Comments in GN Docket No. 93-252 at 2-3.

[204] MCI Comments in GN Docket No. 93-252 at 8.

[205] Pacific Comments in GN Docket No. 93-252 at 20.

interconnection agreements that best suit their individual needs.[206] US West insists that this flexibility will be particularly useful in the PCS context where services are expected to be diverse and evolve over time. US West further contends that the dissatisfaction with the current negotiation system expressed by some parties is not shared by most carriers participating in the current Part 22 framework.[207]

112. In discussions with Commission staff, CTIA and McCaw expressed satisfaction with the current system of negotiated contracts with reservations.[208] Although they acknowledged that there were initial difficulties in the negotiation process, most cellular companies express confidence that they currently receive fair, nondiscriminatory interconnection arrangements with the LECs, particularly after the Commission staff has informally participated in individual negotiations at the request of one of the parties. Nextel also indicates that it has had success in negotiating interconnection arrangements for its wide-area SMR system and prefers the flexibility it has to negotiate the interconnection arrangements needed to provide service.[209] CTIA argues that requiring federal interconnection tariffs would lead to an increase in interconnection rates and, therefore, increased rates for consumers.[210]

3. Discussion

113. Section 201(a) imposes on every common carrier engaged in interstate or foreign communication by wire or radio the duty to furnish service upon reasonable request. Section 201(a) also authorizes the Commission, where necessary or desirable in the public interest, to order common carriers to establish physical connections with other carriers.[211] Relying on this authority we seek comment on whether we should require LECs to offer interconnection to CMRS providers under tariff pursuant to Section 203, or whether we should retain our current

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[206] US West Comments in GN Docket No. 93-252 at 31, Reply Comments at 17; GTE Comments in GN Docket No. 93-252 at 21, Reply Comments at 13. *See also* Century Comments in GN Docket No. 93-252 at 7.

[207] US West Reply Comments in GN Docket No. 93-252 at 17.

[208] *See* Ex Parte Letter in GN Docket No. 93-252, from Michael Altschul, Vice President, General Counsel, CTIA (March 15, 1994); Ex Parte Letter in GN Docket No. 93-252, from Cathleen A. Massey, Senior Regulatory Counsel, McCaw (March 23, 1994).

[209] *See* Ex Parte Letter in GN Docket No. 93-252, from Lawrence A. Krevor, Director, Government Affairs, Nextel (March 23, 1994).

[210] *See* Ex Parte Letter in GN Docket No. 93-252, from Michael Altschul, Vice President, General Counsel, CTIA (March 15, 1994).

[211] *See* 47 U.S.C. § 201(a). *See also* para. 31, *supra*, for further analysis of our Section 201 authority.

requirement that LECs establish, through good faith negotiations with CMRS providers, the rates, terms and conditions of interconnection. In responding to this question parties should identify the costs and benefits of imposing a tariff obligation and compare those to the costs and benefits of the existing system of good faith negotiations.

114. Many commenters believe that the current system of negotiated agreements should be retained. Most of the LEC and cellular commenters indicate that the process of individually negotiated rates was extremely time-consuming and contentious when it first began. These difficulties may have been related to the uncertainties surrounding divestiture. At this time, the LECs and parties seeking interconnection service have more experience with the interconnection service arrangements, and most LECs and cellular carriers have indicated that they are satisfied with the current process of negotiating interconnection agreements. Currently, most cellular carriers agree that the process has ultimately resulted in: (1) lower rate levels than tariffing would have produced, given the administrative and other costs incurred in the tariffing process; and (2) service arrangements better tailored to particular interconnection needs than would have been possible under a tariffed rate structure. The need for flexibility in structuring interconnection arrangements is particularly important in the mobile services area where technological advances are constantly evolving.

115. A comparison of the two approaches reveals that both have benefits and costs. Tariffing, with its attendant filing and reporting requirements, could impose administrative costs upon carriers, which could lead to increased rates, but there are also transaction costs in developing negotiated arrangements. Moreover, a tariffing requirement might lead to less flexible interconnection arrangements for CMRS providers. Tariffs may not provide sufficient flexibility for crafting multiple options that reflect the different needs of different carriers.

116. On the other hand, tariffing is an established mechanism for ensuring that rates, terms and conditions are reasonable and that carriers do not engage in unreasonable discrimination. Because LECs have some incentive to delay or to impose barriers to the development of competition from new CMRS services, such as PCS, a tariff process might be in the public interest.

117. In the context of the option to require tariffing of interconnection arrangements, we seek information on the network architecture and facilities involved in providing interconnection to CMRS providers. We also seek comment on MCI's suggestion that interconnection furnished to CMRS providers be purchased under the LEC expanded interconnection tariffs, and ask what changes, if any, to such tariffs would be required to implement this proposal. In addition, parties should address whether we should prescribe specific rate elements, and the nature and type of cost support LECs should be required to file with their tariffs. Further, parties should comment on whether an approach such as contract tariffs would provide a reasonable degree of protection to consumers while also offering greater flexibility to develop individualized interconnection arrangements for particular CMRS providers.

118. We note that some of the objections to the system of negotiated agreements stem

from the fear that new entrants might lack the bargaining power to secure fair and reasonable interconnection agreements through the negotiation process. We recognize that new market entrants, such as PCS providers, might be concerned that despite the obligation that they negotiate in good faith, LECs would treat these new entrants in much the same way the LECs treated cellular providers in the early 1980s. Consequently, we ask interested parties to identify any changes to the existing system of negotiated contracts that might improve the current situation and address the concerns of CMRS providers or LECs. We also seek comment on whether permitting negotiated interconnection arrangements would be inconsistent with other Commission interconnection policies that require interconnection arrangements to be tariffed and whether any such inconsistency would lead to results that are contrary to the public interest.

119. We seek comment on whether, in order to meet our competitive goals, we should, in lieu of imposing a tariff filing obligation, revise the good faith negotiation requirement by adding two new safeguards against unreasonably discriminatory rates, terms and conditions. Specifically, we seek comment on whether requiring that negotiated interconnection agreements contain a clause that would guarantee that the most favorable terms, conditions and rates provided by the LEC to one CMRS provider be made available to all.[212] By requiring such a contractual provision, we seek to protect new market entrants unfamiliar with the interconnection service negotiation process and the service possibilities that have already been established. We seek comment on whether this requirement would improve the bargaining position of the new entrant facing an entrenched service provider. We also seek comment on whether inclusion of such a clause would impart some of the benefits of tariffing, which enables all customers to take service at the same rates and on the same terms and conditions, without including some of the disadvantages of the tariffing process, such as administrative cost, delay and lack of flexible service structuring. We seek comment on these proposals, and on any variant of these types of requirements that would reasonably attain the same ends.

120. In addition, we seek comment on whether we should require LECs to file with the Commission all carrier-to-carrier interconnection agreements so that the terms, conditions and rates are available for public inspection. This requirement might increase the bargaining position of new entrants by giving them public access to the agreements existing service providers have been able to obtain. It could also serve as a self-enforcing vehicle to ensure nondiscriminatory interconnection. Finally, we seek comment on ways in which to avoid conflicts with state interconnection tariffing requirements, and minimize the ability of carriers to manipulate rate levels.

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[212] These clauses are often referred to as "most favored nation" clauses.

B. *Inquiry Into Interconnection and Resale Obligations of Commercial Mobile Radio Service Providers*

1. Introduction and Background

121. In the *CMRS Second Report*, we concluded that the record was inadequate to decide whether to adopt generic rules requiring CMRS providers to provide interstate interconnection to other mobile service providers.[213] Thus, a principal objective of this Notice of Inquiry is to explore whether interstate interconnection requirements would foster the interconnectivity and growth of diverse and competitive mobile services. A second objective of this inquiry is to examine whether regulatory symmetry in CMRS interconnection obligations, subjecting competitors providing similar services to similar interconnection rules and conditions, would further congressional and Commission objectives. This second objective also includes an examination of the extent to which the establishment of interstate interconnection obligations applicable to CMRS providers would promote or hinder realization of regulatory symmetry for CMRS.[214] Thus, taking these objectives together, we seek comment on whether it is necessary for our regulations to require CMRS providers to provide interstate interconnection to other CMRS providers, or whether we can anticipate that the CMRS marketplace will develop in such a way that the establishment of interconnection obligations applicable to CMRS providers is not necessary.

122. As a general matter, we request that commenters, in addressing the specific issues and questions we raise in the following sections, frame their analyses with reference to the broader issues raised by CMRS interconnection. We believe that these broader issues include the following: (1) How can the Commission foster economic growth through the decisions we make regarding CMRS interconnection requirements? (2) What types of CMRS interconnection obligations, if any, may be necessary to ensure that as many potential users as possible will have access to the public switched network? (3) What are the potential costs and benefits of any interconnection obligations raised in this NOI or recommended by commenters? (4) How should the financial and technological capabilities of CMRS providers influence our decisions on these issues? (5) To what extent would it be advisable for the Commission to conclude that a gradual implementation of interconnection obligations will best serve the interests of CMRS providers,

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[213] A pending Petition for Reconsideration of the *CMRS Second Report* raises the issue of whether the Commission is required, before August 10, 1994, to adopt generic rules ordering CMRS providers to offer interconnection to other CMRS providers. Petition for Reconsideration of CMRS Second Report filed by National Cellular Resellers Association (NCRA), May 19, 1994; *see also* Petition for Reconsideration of CMRS Second Report filed by Cellular Service, Inc. and ComTech, Inc., May 19, 1994. Until any such generic rules are adopted, we will, of course, entertain any requests to order interconnection pursuant to Section 332(c)(1)(B) on a case-by-case basis.

[214] *CMRS Second Report*, 9 FCC Rcd at 1420.

in particular, new and small CMRS providers, and their customers? Any interconnection obligations that we might adopt for CMRS providers should be the most efficient means of implementing fair, reasonable, and non-discriminatory interconnection, consistent with the provisions of Sections 201 and 202 of the Act.[215] Commenters should also address the extent to which any interconnection obligations of CMRS providers that we may ultimately adopt after notice and comment rulemaking in this proceeding should be harmonized with equal access interconnection requirements.

123. We are also initiating this inquiry to explore resale obligations for CMRS providers. The Commission has a longstanding prohibition against restrictions on resale service,[216] which the Commission has also extended to cellular service.[217] The Commission later refined its cellular resale requirement by eliminating mandatory resale to a facilities-based competitor in the same cellular market after the competitor has been licensed for five years.[218] We announced in the *CMRS Second Report* that we would issue a Notice of Inquiry to explore whether we should require all CMRS licensees to resell their services to non-facilities based competitors in the licensee's service area as well as to facilities-based competitors that have held licenses less than five years. The *CMRS Second Report* concluded that we would continue our resale policy with respect to cellular providers during the pendency of this proceeding.[219] In this NOI we seek comment on whether some or all CMRS service providers other than cellular licensees should be required to resell service to facilities-based or non-facilities-based CMRS competitors and what limitations, if any, should be placed on that requirement.

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[215] 47 U.S.C. §§ 201, 202.

[216] The definition of resale service that we have applied is an "activity wherein one entity subscribes to the communication services and facilities of another entity and then reoffers communications service to the public (with or without adding value) for profit." *See* Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261, 271 (1976) (*Resale and Shared Use Decision*), *modified on other grounds*, *Resale and Shared Use Reconsideration Order*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978). *See also* Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 FCC 2d 167, 193 (1980) (*Resale of Switched Services*).

[217] *See Cellular Order*, 86 FCC 2d at 511.

[218] *See* Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, Report and Order, 7 FCC Rcd 4006, 4009 (1992) (*Cellular Resale Order*). *See also* 47 CFR § 22.914, Provision of resale capacity and cellular service to subscribers.

[219] *See CMRS Second Report*, 9 FCC Rcd at 1500.

2. General Legal and Policy Issues

124. As explained in our NPRM regarding equal access, the Commission's authority to impose interstate interconnection obligations on any common carrier derives from Section 201(a) of the Act.[220] Thus, if the Commission determines that imposing interconnection obligations would be in the public interest, we have the authority to order CMRS providers to establish physical interconnection with other carriers. In this Notice of Inquiry, we begin with a threshold question of whether we need to impose interstate interconnection obligations on CMRS providers. In our previous decisions to impose interstate interconnection obligations on LECs, we have reasoned that such obligations are necessary to ensure access to bottleneck facilities and the public switched network.[221] We have recognized, however, that CMRS providers do not have control over bottleneck facilities.[222] Also, the interconnection obligations that we have imposed on the LECs ensure that all CMRS providers can have access to the public switched network.[223] We believe that CMRS interconnection with the public switched network is an essential component in the establishment and growth of CMRS offerings and that the ubiquity of such interconnection will facilitate universal deployment of diverse CMRS services to customers.[224]

125. In approaching the question of whether there is a need to propose rules regarding interstate interconnection obligations applicable to CMRS providers, we seek comment on the following general questions. First, is there a basis for us to conclude that, given our view that CMRS providers generally do not control bottleneck facilities, we should refrain from imposing interconnection obligations on CMRS providers, or is there a basis for us to conclude that there are policy considerations that would warrant imposition of interconnection obligations even in the absence of bottleneck facilities? In addressing this question, commenters should assess the extent to which it may be reasonable to conclude that the CMRS marketplace may function as an effective regulator of interconnection arrangements if CMRS providers lack market power

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[220] *See* Section II.B.2., ¶31.

[221] *See, e.g., Interconnection Order*, 2 FCC Rcd at 2913-16.

[222] *CMRS Second Report*, 9 FCC Rcd at 1499.

[223] *See* Section 20.11(a) of the Commission's Rules, providing in pertinent part, that "[a] local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier . . . ." 47 CFR § 20.11(a). This rule, adopted in the *CMRS Second Report*, is scheduled to take effect on July 18, 1994.

[224] *See CMRS Second Report*, 9 FCC Rcd at 1499. Indeed, one element of the statutory definition of CMRS is that it be interconnected with the public switched network. In addition, the *CMRS Second Report* defines the term "public switched network" broadly so that it also includes at least some CMRS providers. *Id.* at 1436-37.

or control of bottleneck facilities.[225] Second, would it be a reasonable exercise of our discretion under Section 201 of the Act to conclude that any further examination of whether to impose interconnection obligations on CMRS providers may be premature at this stage in the development of the CMRS marketplace? Commenters should identify factors regarding the nature of the CMRS marketplace that would support such a conclusion. If we conclude that it would be premature to establish CMRS interconnection obligations, should we examine the potential need for CMRS interconnection obligations as part of our efforts to monitor the development of the CMRS marketplace?[226]

126. As noted in the preceding paragraph, we are seeking comment on the alternative view that our general interconnection policies would justify the imposition of interconnection obligations on CMRS providers. Commenters should address reasons why it would be appropriate for the Commission to exercise our discretion to establish interconnection obligations under Section 201 of the Act while the CMRS marketplace is undergoing a period of rapid development. We ask commenters to focus on whether interconnection requirements would advance competition and encourage efficiencies and lower rates in the mobile services marketplace. We do not wish to encourage a situation where most traffic from one CMRS service subscriber must pass through a LEC switch for its traffic to reach a subscriber to another CMRS service, if such routing would be inefficient or unduly costly.[227] We seek comment on whether the failure to impose new interconnection obligations might unnecessarily restrict the capability of any CMRS providers (particularly the newly classified CMRS service providers) to interconnect with the facilities of other CMRS providers. We also seek comment on whether any class of CMRS providers should be required to provide interconnection to all CMRS providers[228] or only to certain other classes of CMRS providers. Should the Commission address such matters by declaratory rulings resolving particular cases, or by issuing rules, either specific rules or rules based on a general standard of reasonableness?[229]

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[225] Although the *CMRS Second Report* found that CMRS providers do not control bottleneck facilities, we did not reach any conclusion about whether cellular providers have market power. *See CMRS Second Report*, 9 FCC Rcd at 1470.

[226] The Budget Act requires the Commission to monitor the state of competition in the CMRS marketplace. Communications Act § 332(c)(1)(C), 47 U.S.C. § 332(c)(1)(C). In addition, we will shortly issue a Notice of Proposed Rulemaking to propose means by which we will monitor the cellular marketplace.

[227] *See CMRS Second Report*, 9 FCC Rcd at 1499.

[228] For a discussion of whether CMRS providers would be required to provide interconnections to PMRS providers or individuals, see para. 129, *infra*.

[229] *See, e.g., Cellular Interconnection Order*, 4 FCC Rcd at 2374, *aff'g Interconnection Order*, 2 FCC Rcd 2910 (1987) (Commission adopted policy statement rather than specific rules because of existence of a variety of interconnection arrangements and system designs). *Cf.*

127. The next set of questions we invite commenters to address involves whether, if we ultimately require interconnection, different kinds of interconnection obligations should apply to different kinds of CMRS providers, *i.e.* on a service-by-service basis, or whether similar obligations should be placed on all CMRS providers. Further, we seek comment on whether, if we do not impose uniform interconnection obligations on all CMRS providers, any technological factors might affect whether particular classes of CMRS services should have interconnection obligations, while other classes should not. Commenters are also invited to propose other factors the Commission might use to determine whether to impose interconnection obligations on various CMRS providers. For example, should interconnection obligations reflect technological capability (characteristics unique to each service), capacity or size of CMRS providers,[230] start-up or development costs of interconnection, and subscriber demand? Commenters that propose different interconnection obligations for various classes of CMRS providers should also discuss how this would affect achievement of our goals of fostering the development of diverse mobile services and non-discriminatory access to mobile services. Since the establishment of different interconnection obligations for different classes of CMRS providers would, by definition, result in a lack of symmetry in the regulation of CMRS providers, commenters should address the issue of whether the benefits that may be realized from differing interconnection obligations outweigh the costs that might result from this lack of regulatory symmetry.

128. In addition, we invite comment on whether we should establish any interstate interconnection obligations applicable to CMRS resellers using their own switches. We note that cellular resellers have requested that the Commission impose interconnection obligations on cellular carriers so cellular resellers can use their own switch to provide certain technologically advanced features to their customers.[231] Commenters should address whether it would be appropriate to require CMRS resellers that employ their own switch to offer interconnection to other CMRS providers or other customers.

129. Finally, we seek comment on whether we need to consider applying the foregoing considerations with regard to interstate interconnection to private carriers or individuals. In the *CMRS Second Report*, we concluded that if a private mobile radio service (PMRS) licensee shows that a LEC provides interconnection to CMRS licensees while denying interconnection of the same type and at the same rate to PMRS licensees, the carrier has the burden of establishing why its refusal would not constitute denial of a reasonable request for service in

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CMRS Second Report, 9 FCC Rcd at 1498.

[230] For instance, should interconnection obligations be imposed on companies having annual revenues of more than a certain amount from regulated telecommunications operations, but not on smaller companies?

[231] *See* Ex Parte Letter in GN Docket No. 93-252, from David Gusky, Executive Director, NCRA (Jan. 5, 1994).

violation of Section 201(a) of the Act.[232] We seek comment on whether CMRS providers should be under a comparable obligation.

3. Interconnection Facility Issues

a. Forms of Interconnection, Specific Facilities

130. We seek further comment on the specific kinds of interconnection that might be appropriate, in the event we impose interconnection obligations, to require a CMRS provider to offer to other carriers and customers.[233] We inquire whether the nature of the facilities that CMRS providers employ or will employ, and the ways they currently connect or plan to connect to the public switched network through LEC facilities, should affect the kind of interconnection that CMRS carriers may be required to provide. Specifically, do some CMRS providers use types of facilities that are different from the facilities LECs or other CMRS providers use to offer interconnection, or is it likely that they will do so in the future? If so, what is the nature of these differences, and should the Commission establish different interconnection obligations due to any differences in interconnection facilities?[234]

b. Structure for Rates, Terms, and Conditions

131. We stated in the *CMRS Second Report* that if we require CMRS providers to furnish interconnection, the statutory provisions added by the Budget Act clearly preempt state regulation of the rates for such interconnection.[235] We did not reach, however, the issue of whether we should also specify a structure for interconnection rates, terms, and conditions if we establish CMRS interconnection obligations.[236] In requiring that the LECs provide reasonable, uniform interconnection to CMRS providers, the *CMRS Second Report* also made the LECs

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[232] *CMRS Second Report*, 9 FCC Rcd at 1500-01.

[233] *See* Section III.A.1, ¶105.

[234] *See* Section III.B.2., ¶127.

[235] *CMRS Second Report*, 9 FCC Rcd at 1500, *citing* Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3). For further discussion of preemption issues, see Section III.B.5, *infra*.

[236] Pursuant to the *CMRS Second Report*, 9 FCC Rcd at 1499, we are addressing elsewhere in this *Notice* particular proposals for LEC tariffs, specific tariff rate elements, the possible structure for these elements, and alternative requirements to ensure reasonable charges for interconnection furnished to CMRS providers. *See* Section III.A, *supra*.

subject to several requirements, including mutual compensation,[237] and the establishment of reasonable charges for interstate interconnection provided to CMRS licensees. The *CMRS Second Report* also provided that these changes should not vary from the charges for interconnection provided by LECs to other mobile radio service providers.[238] Commenters should address whether CMRS providers should be subject to a requirement of mutual compensation vis-a-vis other CMRS providers. We also invite comment on what objectives we should pursue in addressing these issues related to interconnection rate structure and whether any pricing rules are necessary. Specifically, commenters should address whether we should require CMRS providers to tariff the rates for their interconnection arrangements. If we do not require tariffs, should we base our decision on an exercise of our forbearance authority under Section 332(c)(3) of the Act or some other theory?[239]

132. In defining LEC interconnection obligations to CMRS providers, we have determined that "reasonable interconnection" should include offering the type of interconnection chosen by a carrier if it is technically feasible and economically reasonable, and the provision of that interconnection within a reasonable time.[240] We also have previously concluded that dissimilar charges for similar services may be unjustly discriminatory in violation of Section 202(a) of the Act, depending on the facts of a particular case.[241] We seek comment on whether such interconnection standards should apply to CMRS providers with regard to specific terms, including, for example, the rates charged to different CMRS providers, the form of interconnection requested, the time within which CMRS providers should be required to respond to interconnection requests, and the interconnection system design.

c. Interoperability Issues

133. In the *CMRS Second Report*, we said we would address some of the comments concerning interoperability and interconnection in an NOI.[242] For example, MCI contended that interconnection obligations should include providing interexchange carriers and others with

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[237] *CMRS Second Report*, 9 FCC Rcd at 1498. Under mutual compensation, LECs are required to compensate CMRS providers for the reasonable costs they incur in terminating traffic that originates on LEC facilities, and CMRS providers are required to provide such compensation to LECs in connection with mobile-originated traffic terminating on LEC facilities. *Id.*

[238] *Id.* at 1498.

[239] 47 U.S.C. 332(c)(1)(A).

[240] *CMRS Second Report*, 9 FCC Rcd at 1498.

[241] *Interconnection Order*, 2 FCC Rcd at 2914.

[242] *CMRS Second Report*, 9 FCC Rcd at 1499.

access to mobile location data bases and to routing information.[243] With regard to those network services by LECs, we noted that these issues are being explored in the Commission's intelligent network proceeding.[244]

134. First, because MCI's comments deal with enabling customers to use intelligent network services wherever they travel, some of the issues appear to relate to questions of interconnection by CMRS providers. Some commenters had no objection to the MCI proposal if it permitted mobile service providers to send messages to their mobile data bases solely to enable the identification and location of customers.[245] We invite comment on the forms of interconnection and kinds of facilities and equipment that would be required to effectuate MCI's proposals. For example, what interconnection obligations may be necessary to ensure that CMRS carriers provide to end users of various CMRS services the kinds of information contemplated by MCI, *i.e.*, Home Location Register and Visited Location Register?

135. On the other hand, some commenters objected to the MCI proposal, contending that it would constitute an unlawful deprivation of property rights, because it would allow access to confidential proprietary information that cellular carriers, for example, create regarding their customers.[246] Commenters should address the legal and policy issues raised by MCI's request.

136. In addition, matters of interoperability standards that would promote compatible equipment and ensure that customers would have the ability to "roam" from one licensee's service area to another are being addressed in another separate proceeding.[247] We believe, however, that at least one of the issues relates to this proceeding and warrants attention here. For example, what kinds of interconnection obligations or facilities may be necessary to implement new or modified interoperability standards? We seek comment on this and any other matters of interoperability that commenters believe we should examine in this inquiry

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[243] *Id.* at 1499-1500, *citing* MCI Comments, GN Docket No. 93-252, filed Nov. 8, 1993, at 10.

[244] *Id.* at 1500 n.482, *citing* In the Matter of Intelligent Networks, CC Docket No. 91-346, Notice of Proposed Rule Making, 8 FCC Rcd 6813 (1993)(*IN Notice*).

[245] Pacific Bell and Nevada Bell Telecommunications Corporation Reply Comments, GN Docket No. 93-252, filed Nov. 23, 1993, at 2-3.

[246] Pactel Corporation Reply Comments, GN Docket No. 93-252, filed Nov. 23, 1993, at 15-16; *see also* Southwestern Bell Corporation Reply Comments, GN Docket No. 93-252, filed Nov. 23, 1993, at 9-10.

[247] Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Further Notice of Proposed Rule Making, FCC No. 94-100, ¶ 57 (adopted Apr. 20, 1994; released May 20, 1994) (*Transition Further Notice*).

proceeding.

4. CMRS Carrier Resale Obligations

137. We seek comment regarding whether we should propose rules to place the resale obligations that apply to cellular licensees on all CMRS providers or any particular class of CMRS providers. In refining our resale policy with respect to cellular carriers, we have sought to foster certain goals such as establishing nationwide availability of cellular service, and promoting efficient allocations of spectrum resources and interbrand competition.[248] Similarly, the *CMRS Second Report* set forth general policy guidelines that focus on fostering competition and economic growth in the mobile marketplace.[249] There we said that we "interpret the elements of the commercial mobile radio service definition in a manner that ensures that competitors providing identical or similar services will participate in the marketplace under similar rules and regulations."[250] Thus, we invite comment on whether, in view of the economic objectives we seek to promote, regulatory symmetry requires unrestricted resale obligations for all CMRS services. More specifically, we request comment on how resale obligations would assist in the development of CMRS services. For example, will resale obligations allow new entrants in a market to offer service to the public more quickly because they could resell another service while building their own facilities?[251] We also seek discussion of unique features for the foregoing services that might support retaining a resale obligation only for cellular service.

138. We have found that a strong resale market for cellular service fosters competition.[252] We seek comment identifying those CMRS services in which a resale market is likely to develop, such as wide area SMR and PCS. We also seek comment on whether our objectives for CMRS either require or would be promoted by resale obligations similar to those now in effect for cellular service. In addition, commenters should address whether the Act can be construed to require or whether Commission policy should require some or all CMRS providers to allow customers of other CMRS providers to use their service on a roaming basis. If the Commission does not require the technical compatibility of equipment,[253] such a roaming

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[248] *See Cellular Resale Order,* 7 FCC Rcd at 4007.

[249] *See* 9 FCC Rcd at 1420.

[250] *Id.*

[251] It is possible that a new PCS licensee may wish to resell cellular service by providing subscribers with a handset that is compatible with cellular and PCS technology, while the PCS licensee is constructing its own PCS facilities. *See e.g.* Ex Parte Letter in GN Docket No. 90-314, from Alan F. Ciamporcero, Senior Counsel, Pacific Telesis Group (May 12, 1994).

[252] *See Cellular Resale Order*, 7 FCC Rcd at 4008.

[253] *See* Section III.B.3, ¶ 136.

requirement could apply only in situations where the customer's equipment is compatible with the CMRS system where the customer roams.

139. If we ultimately impose resale obligations on some or all classes of CMRS providers, we seek comment on whether our current cellular policy limiting a facilities-based competitor's mandatory right to resale to five years should be applied to those CMRS providers. In the *Cellular Resale Order* we limited to five years the obligation of a cellular licensee to resell to its facilities-based competitor. We reasoned that unrestricted resale can harm competition in the cellular industry by limiting facilities-based competition.[254] We seek comment on whether the same analysis would be valid for other services or some other policy would be more appropriate. For example, should there be unrestricted resale for an unlimited time? Or should the Commission restrict the resale obligation to a limited period for some or all CMRS services?

140. Second, we ask whether, for the various CMRS geographic market areas to develop expeditiously and meet our policy objectives, cellular providers should be exempt from providing resale to facilities-based CMRS competitors in their service areas even during the first five years that these competitors hold their licenses? Commenters should address the standards the Commission might use to identify the services that compete with cellular service.[255] Also, would any overlap in service areas between competitive service providers be sufficient to restrict resale obligations, or should the Commission establish some threshold amount of overlap and, if so, what threshold amount should we choose?

141. Lastly, we apprise prospective commenters that, in considering resale restrictions, the Commission must eventually determine whether the restrictions are just and reasonable under Section 201(b) of the Act; and in doing so, must weigh the harm to the public posed by such restrictions against the potential benefits to the public.[256] We must also make a similar determination under Section 202(a) of the Act. Thus, it is important to develop a complete record regarding CMRS services, including the extent to which exemptions or restrictions affect competition in the marketplace.

5. Preemption Issues

142. In the *CMRS Second Report* we concluded that we should preempt state and local

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[254] *See Cellular Resale Order*, 7 FCC Rcd at 4008.

[255] *See, e.g., Transition Further Notice*, at ¶¶ 12-13 (Commission tentatively concluded that services are substantially similar if they are offered in competition to customers with substantially similar needs and demands).

[256] *See Resale and Shared Use Decision*, 60 FCC 2d at 283. *See also* Hush-a-Phone Corp. v. U.S., 238 F.2d 266 (D.C. Cir. 1956).

regulation of the kinds of LEC interconnection to which CMRS providers are entitled.[257] We found that separate interconnection arrangements for interstate and intrastate CMRS are not feasible and that state regulation of the right to and type of interconnection "would negate the important federal purpose of ensuring CMRS interconnection to the interstate network."[258] We note that the Budget Act preempts state regulation of CMRS rates and entry,[259] but specifically permits state regulation of other terms and conditions of CMRS providers.[260] Our preemption applied only to LEC obligations to provide the type of interconnection reasonably requested by all CMRS providers.[261] We therefore inquire as to whether the conclusion we reached in the *CMRS Second Report* regarding LECs should extend to the kinds of interconnection furnished by CMRS providers to other carriers and other service providers.

143. Our conclusion in the *CMRS Second Report* was premised on the principle that the Commission may exercise preemption over state regulation when interstate and intrastate services are inseparable and the state regulations would thwart or impede federal policies.[262] We have relied upon that principle and the supporting judicial authority to justify our preemption of other state action related to interconnection.[263] We believe that the foregoing legal authority would support preemption of state regulation of interconnection arrangements by CMRS providers, but we invite comment on this issue. In particular, if we decide not to impose interconnection obligations on some or all CMRS providers, should we preempt any state from imposing such obligations? With respect to state jurisdiction over the intrastate interconnection rates charged by CMRS providers, the *CMRS Second Report* determined that the Budget Act

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[257] *See CMRS Second Report*, 9 FCC Rcd at 1498.

[258] *Id.*

[259] A state may petition the Commission for authority to regulate rates for any commercial mobile radio service. *See* Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3). *See also CMRS Second Report*, 9 FCC Rcd at 1504-07.

[260] *See* Communications Act, § 332(c)(3), 47 U.S.C. § 332(c)(3).

[261] *See also CMRS Second Report*, 9 FCC Rcd at 1504-07.

[262] *See id.* at 1498, n.474, *citing* Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 375 n.4 (1986); Maryland Pub. Serv. Comm'n v. FCC, 909 F.2d 1510 (D.C. Cir. 1990); California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Illinois Bell Tel. v. FCC, 883 F.2d 104 (D.C. Cir. 1989); National Ass'n of Reg. Util. Comm'ners v. FCC, 880 F.2d 422 (D.C. Cir. 1989) (*NARUC II*); Public Util. Comm'n of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989); North Carolina Util. Comm'n v. FCC, 552 F.2d 1036 (4th Cir.) (*NCUC I*), *cert. denied*, 434 U.S. 874 (1977); North Carolina Util. Comm'n v. FCC, 537 F.2d 787 (4th Cir.) (*NCUC II*), *cert. denied*, 429 U.S. 1027 (1976).

[263] *Interconnection Order*, 2 FCC Rcd at 2912-13.

preempts any state regulation of CMRS interconnection rates.

IV. CONCLUSION

144. We tentatively conclude that, in concept, equal access is in the public interest. Equal access promotes the important objectives of customer choice and enhances competition in the interexchange market. Based on the record before us, we propose to impose equal access obligations on cellular carriers, and seek comment on whether the Commission should impose equal access obligations on any other CMRS provider. We seek comment on the proposed criteria we identify for assessing whether we should extend this obligation to other CMRS providers. We also seek comment on how we should define the equal access obligation in the CMRS marketplace if we decide to implement an equal access requirement. We also seek comment on whether we should impose a tariffing requirement or retain the requirement that LEC interconnection be provided to CMRS providers pursuant to good faith contractual negotiations. We seek further comment on whether in lieu of a tariffing obligation, we should require LECs to meet certain additional requirements to protect against unreasonably discriminatory interconnection arrangements for new market entrants. Finally, we begin an inquiry into issues relating to interconnection among CMRS providers. We propose to gather information on technical developments concerning interconnection protocols, procedures, and facilities, and to explore the significance of these developments in the environment of CMRS. We seek comment on the appropriate role of Commission regulation to foster interconnection and competition between new services in the mobile telecommunications marketplace, including whether to require CMRS providers to resell their services to facilities-based and non-facilities based competitors.

V. PROCEDURAL MATTERS

A. Ex Parte Rules

145. This is a non-restricted notice and comment rule making proceeding and inquiry. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules.[264]

B. Regulatory Flexibility Act

146. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 601 *et.seq.* (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of the policies and rules proposed in this Notice on small entities. The IRFA is contained in Appendix B to this *Notice*. The Secretary shall cause a copy of this *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

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[264] *See generally*, Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a).

C. Authority

147. This action is taken pursuant to Sections 1, 4(i), 4(j), 201, 202, 208, 332, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 154(i), 201, 202, 208, 332, and 403.

D. Further Information

148. For further information regarding this *Notice*, contact Judy Argentieri or Barbara Esbin at (202) 418-1520 (Common Carrier Bureau, Tariff Division) or Nancy Boocker or David Siehl at (202) 418-1300 (Common Carrier Bureau, Mobile Services Division).

VI. ORDERING CLAUSES

149. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes described above, and that COMMENT IS SOUGHT on these proposals.

150. IT IS FURTHER ORDERED that NOTICE IS HEREBY GIVEN of the inquiry described above, and that COMMENT IS SOUGHT on the questions raised in the inquiry.

151. IT IS FURTHER ORDERED that the petition for rule making filed by MCI Telecommunications Corporation IS GRANTED.

152. IT IS FURTHER ORDERED that the motion to accept late filed comments in RM-8012 filed by Telephone and Data Systems, Inc. and United States Cellular Corporation IS GRANTED.

153. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments SHALL BE FILED with William F. Caton, Acting Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before **August 30, 1994**, and reply comments SHALL BE FILED with the Secretary on or before **September 29, 1994**. To file formally in this proceeding, parties must file an original and five copies of all comments, reply comments, and supporting comments. Parties wishing each Commissioner to receive a personal copy of their comments must file an original plus nine copies. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, the International Transcription Services, Inc., Suite 140, 2100 M Street, N.W. Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

PARTIES FILING COMMENTS IN GN DOCKET NO. 93-252

Party (and Short Title)

Advanced MobileComm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc. (AMT/DSST)
Aeronautical Radio, Inc. (ARINC)
AllCity Paging, Inc. (AllCity)
American Mobile Telecommunications Association, Inc. (AMTA)
American Petroleum Institute (American Petroleum)
Ameritech
AMSC Subsidiary Corporation (AMSC)
Arch Communications Group, Inc. (Arch)
Association of American Railroads (AAR)
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Bell Atlantic Companies (Bell Atlantic)
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and Mobile Communications Corporation of America (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
Celpage, Inc., Network USA, Denton Enterprises, Copeland Communications & Electronics, Inc. and Nationwide Paging (Celpage)
CenCall Communications Corporation (CenCall)
Century Cellunet Inc. (Century)
Comcast Corporation (Comcast)
Corporate Technology Partners (CTP)
Cox Enterprises, Inc. (Cox)
E.F. Johnson Company (E.F. Johnson)
General Communication, Inc. (GCI)
Geotek Industries, Inc. (Geotek)
Grand Broadcasting Corporation (Grand)
GTE Service Corporation (GTE)
Hardy & Carey (Hardy)
Illinois Valley Cellular RSA 2 Partnerships (IVC Partnerships)
In-Flight Phone Corporation (In-Flight)
Industrial Telecommunications Association, Inc. (ITA)

Liberty Cellular, Inc. (Liberty)
Lower Colorado River Authority (LCRA)
McCaw Cellular Communications, Inc. (McCaw)
MCI Telecommunications Corporation (MCI)
Metricom, Inc. (Metricom)
Mobile Telecommunication Technologies Corp. (Mtel)
Motorola, Inc. (Motorola)
MPX Systems (MPX)
National Association of Business and Educational Radio, Inc. (NABER)
National Association of Regulatory Utility Commissioners (NARUC)
National Cellular Resellers Association (NCRA)
National Telephone Cooperative Association (NTCA)
New Par
New York State Department of Public Service (New York)
Nextel Communications, Inc. (Nextel)
North Pittsburg Telephone Company (NPTC)
NYNEX Corporation (NYNEX)
Pacific Bell and Nevada Bell (Pacific)
Pacific Telecom Cellular, Inc. (PTC)
Pactel Corporation (Pactel)
Pactel Paging (Pactel Paging)
Pagemart, Inc. (Pagemart)
Paging Network, Inc. (PageNet)
People of the State of California and the Public Utilities Commission of the State of California (California)
Personal Radio Steering Group Inc. (PRSG)
Pioneer Telephone Cooperative, Inc., Pioneer Telecommunications, Inc., and O.T.&T. Communications, Inc. (Pioneer)
PN Cellular, Inc. and Affiliates (PNC)
PTC Cellular (PTC-C)
Public Service Commission of the District of Columbia (DC PSC)
Ram Mobile Data USA Limited Partnership (RMD)
Reed Smith Shaw & McClay (Reed Smith)
Rig Telephones, Inc. (Rig)
Roamer One, Inc. (Roamer)
Rochester Telephone Corporation (Rochester)

Rockwell International Corporation (Rockwell)
Rural Cellular Association (Rural Cellular)
Southwestern Bell Corporation (Southwestern)
Sprint Corporation (Sprint)
Starsys Global Positioning, Inc. (Starsys)
Telephone and Data Systems, Inc. (TDS)
Telocator, The Personal Communications Industry Association (Telocator)
Time Warner Telecommunications (Time Warner)
TRW Inc. (TRW)
United States Telephone Association (USTA)
US West
Utilities Telecommunications Council (UTC)
Vanguard Cellular Systems, Inc. (Vanguard)
Waterway Communications System, Inc. (Waterway)

PARTIES FILING REPLY COMMENTS IN GN DOCKET NO. 93-252

Aeronautical Radio, Inc. (ARINC)
American Mobile Telecommunications Association, Inc. (AMTA)
American Paging, Inc. (AmP)
American Petroleum Institute (American Petroleum)
American Telephone and Telegraph Company (AT&T)
AMSC Subsidiary Corporation (AMSC)
ARCH Communication Group (Arch)
Association of American Railroads (AAR)
Bell Atlantic Companies (Bell Atlantic)
BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp. and Mobile Communications Corp. of America (BellSouth)
Cellular Telecommunications Industry Association (CTIA)
CenCall Communications Corporation (CenCall)
Century Cellunet Inc. (Century)
E.F. Johnson Company (E.F. Johnson)
General Communication, Inc. (GCI)
GTE Service Corporation (GTE)
In-Flight Phone Corporation (In-Flight)
Industrial Telecommunications Association, Inc. (ITA)
McCaw Cellular Communications, Inc. (McCaw)
MCI Telecommunications Corporation (MCI)
Metricom, Inc. (Metricom)
Mobile Marine Radio, Inc. (MMR)
National Association of Business and Educational Radio, Inc. (NABER)
Nextel Communications, Inc. (Nextel)
NYNEX Corporation (NYNEX)
Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
Pacific Bell and Nevada Bell (Pacific)
PacTel Paging (Pactel Paging)
Pactel Corporation (PacTel)
Pagemart, Inc. (Pagemart)
Paging Network, Inc. (PageNet)
Pennsylvania Public Utility Commission (PA PUC)
PSC of Nevada (Nevada)

Puerto Rico Telephone Company (PRTC)
Radiofone Inc. (Radiofone)
Ram Mobile Data USA Limited Partnership (RMD)
Roamer One, Inc. (Roamer)
Rochester Telephone Corporation (Rochester)
Rural Cellular Association (Rural Cellular)
RVC Services, Inc., d/b/a Coastel Communications Co. (Coastel)
SACO River Cellular Telephone company (Saco River)
Securicor PMR Systems Ltd. (Securicor)
Southwestern Bell Corporation (Southwestern)
Sprint Corporation (Sprint)
Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC)
Telocator, The Personal Communications Industry Association (Telocator)
TRW Inc. (TRW)
Two Way Radio of Carolina, Inc. (2-Way)
United States Telephone Association (USTA)
US West
Utilities Telecommunications Council (UTC)
Waterway Communications Systems, Inc. (Waterway)

APPENDIX A

PARTIES FILING COMMENTS IN RM 8012

Party (and Short Title)

Advanced Telecommunications Corporation and LDDS Communications (ATC)
Allnet Communications Services, Inc. (Allnet)
ALLTEL Mobile Commuications, Inc. (Alltel)
Ally, Inc., Cellular, Inc., Cellular 7 Partnership, Century Cellunet, Inc., Hiawathaland Cellular Limited Partnership, Marshall Cellular Partnership, Minnesota RSA 9 Limited Partnership, Minnesota RSA10 Limited Partnership, Panhandle Telecommunications Systems, Inc., Rural Cellular Corporation, XIT Cellular (Opposing Group)
American Telephone and Telegraph Company (AT&T)
Ameritech, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, and US West, Inc. (RHCs)
Bell Atlantic (Bell Atlantic)
BMTC, L.P. (BMTC)
Cellular Information Systems, Inc. (CIS)
Cellular Telecommunications Industry Association (CTIA)
Cellwave, Inc. (Cellwave)
Centel Cellular Company (Centel)
Comcast Cellular Communications, Inc. (Comcast)
Competitive Telecommunications Association (Comptel)
Dobson Cellular Systems, Inc. (Dobson)
GTE Service Corporation on behalf of its affiliates, GTE Mobilnet Incorporated and Contel Cellular, Inc. (GTE)
McCaw Cellular Communications, Inc. (McCaw)
National Telephone Cooperative Association (NTCA)
OCOM Corporation (OCOM)
Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
People of the State of California and the Public Utilities Commission of the State of California (California)
Public Utilities Commission of Ohio (Ohio)
Pioneer Telephone Cooperative Inc. (PTC) or (Pioneer)
PMN, Inc. (PMN)

RFB Cellular, Inc. (RFB)
Rochester Telephone Mobile Communications (Rochester Mobile)
SNET Cellular, Inc. (SNET) or (SNET Cellular)
Southwestern Bell Corporation (Southwestern)
Sprint Communications Company L.P. (Sprint)
Telephone and Data Systems and United States Cellular Corporation (TDS)
Unity Cellular Systems, Inc. and Nebraska Cellular Telephone Corporation (Unity)
Vanguard Cellular Systems, Inc. (Vanguard)
WilTel, Inc. (WilTel)

LIST OF PARTIES FILING REPLY COMMENTS IN RM 8012

Fleet Call, Inc. (Fleet Call)
GTE Service Corporation on behalf of its cellular affiliates, GTE Mobilnet Incorporated and Contel Cellular, Inc. (GTE)
Horizon Cellular Telephone Company (Horizon)
McCaw Cellular Communications, Inc. (McCaw)
MCI Telecommunications Corporation (MCI)
United States Telephone Association (USTA)

APPENDIX B

Initial Regulatory Flexibility Act Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA.

Reason for Action

This rule making proceeding was initiated to secure comment on various proposals for the possible application of equal access and interconnection obligations upon certain commercial mobile radio services. This rule making proceeding also continues the implementation of Sections 3(n) and 332 of the Communications Act, 47 U.S.C. §§ 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act. The proposals advanced herein are designed to carry out Congress's intent to establish a uniform regulatory framework for all mobile radio services.

Objectives

Congress has directed the Commission to implement Sections 3(n) and 332, as amended. In accordance with this directive, the Commission seeks to devise a regulatory scheme that will allow for the equitable treatment of comparable mobile services providers, as categorized under the terms of the new legislation. In turn, this will promote regulatory certainty and allow for the enhanced provision of service to the public.

Legal Basis

The proposed action is authorized under the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), and Sections 3(n), 4(i), 303(r), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 153(n), 154(i) and 303(r), 332(c), and 332(d), as amended.

Reporting, Recordkeeping and Other Compliance Requirements

The proposals under consideration in this Notice may impose certain new reporting and recordkeeping requirements on mobile services licensees whose regulatory status has changed from private to commercial as a result of the new legislation. The extent of this increase in burdens will depend on what rules are ultimately adopted.

Federal Rules Which Overlap, Duplicate or Conflict with These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

Many small entities could be affected by the proposals contained in the Notice. Equal access obligations previously applied only to cellular affiliates of Bell Operating Companies. Interconnection obligations have not previously been applied to commercial mobile radio service providers. After evaluating the comments filed in response to the Notice, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

The Notice solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

IRFA Comments

We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph 153 of this Notice.

STATEMENT OF
COMMISSIONER JAMES H. QUELLO

Re: Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services

In response to Congressional action under the 1993 Omnibus Budget Reconciliation Act, the Federal Communications Commission is initiating this proceeding to examine interconnection issues for Commercial Mobile Radio Services. Today we adopt a combined Notice of Inquiry and Notice of Proposed Rule Making ("Notice").

The Notice addresses three fundamental issues: (1) Whether equal access obligations should be imposed on CMRS providers, and, in particular, on non-BOC cellular carriers? (2) Whether interconnection rates, terms and conditions provided by LECs to CMRS providers should be subject to tariff requirements? and (3) Whether CMRS providers should be subject to any obligation to provide interconnection to other CMRS providers. I note that much of the record in this proceeding was developed in response to a pre-existing petition for rule making filed by MCI. It is upon this record that the Notice proffers the sole tentative conclusion, viz., that non-BOC cellular carriers be required to offer access on essentially the same basis that is required of BOC affiliated cellular carriers under the MFJ.

The effect of the previously noted intervening Congressional action to create a comprehensive regulatory structure for the rapidly emerging competitive environment for providers of mobile communications services, however, has not been taken fully into account. Accordingly, it is appropriate that the Commission ask the specific and detailed questions posed in the Notice. I concur in the tentative conclusion only to the extent that it will focus the commentors precisely on the issue in order to more completely develop the record.

My over-riding concern is that we are proposing to impose regulatory structures borne of the MFJ, itself the product of a vastly different market structure, on new and emerging industries such as PCS. I believe that we should be asking how a competitive market for mobile communications will allow us to remove regulatory impediments rather than grafting regulatory stop-gap measures upon a family of services yet to be developed and offered by competitors to the public.

Separate Statement

of

Commissioner Andrew C. Barrett

Re: CMRS Equal Access and Interconnection Notice

This Notice tentatively concludes that non-BOC cellular companies should be subject to equal access obligations similar to BOC cellular companies. However, since this record is based on a 1992 MCI petition for rulemaking, it is not exactly current with respect to several actions: 1. Pending legislation to modify MFJ obligations on Bell Operating Companies and GTE; 2. MCI's acquisition of NEXTEL; and 3. Our decision today to license 6 additional broadband PCS licenses to create additional competition to the existing cellular framework. As a result, the rationale for imposing equal access obligations in the context of "bottleneck facility" market power is not apparent here. Nor does there appear to be a future trend toward further consolidation of market power in the wireless area. In fact, given the greater level of competition that could occur, we may decide that there is no basis for imposing MFJ type of equal access obligations on multiple CMRS providers, including cellular. Thus, this tentative conclusion must be challenged in the record, and a thorough assessment of wireless market competition conditions and cost-benefit analysis must occur. The notice encourages comments which analyze the underlying factors used to justify equal access obligations. I look forward to reviewing the record of this proceeding, and the market basis for considering any type of equal access obligation in the CMRS area. Further, the cost of such obligations should be fully assessed by those who think such obligations should be imposed on non-BOC CMRS providers. My goal in this area, is not to impose more regulation on non-BOC entities, in order to ensure that the cost and burden of MFJ restrictions are applied across the board in the CMRS area. Rather, I believe the Commission's goal should be to develop a transition plan away from MFJ restrictions in the wireless area, and bring everyone into relative parity based on the evolution of full competition in the PCS market. Where interconnection obligations with bottleneck BOC LEC facilities are important, I believe the Commission should impose the appropriate regulatory remedy to address this matter. Where there is no issue of interconnection to bottleneck facilities for transport and switching, then I believe there is a higher burden to justify such regulatory requirements between CMRS providers, and between resellers and CMRS providers under Title II.

SEPARATE STATEMENT OF

COMMISSIONER RACHELLE B. CHONG

Re: *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services -- Notice of Proposed Rule Making and Notice of Inquiry*

In one aspect of the Notice of Proposed Rule Making adopted today, the Commission tentatively concludes that requiring cellular licensees to provide equal access to interexchange carriers will serve the public interest. The Notice seeks comment on this tentative conclusion, and also seeks comment on the costs and benefits of prescribing interexchange equal access obligations for other classes of commercial mobile radio service ("CMRS") providers.

The record compiled to date on equal access issues in the CMRS context is inchoate. It consists primarily of comments received in response to a 1992 petition for rule making filed by MCI urging the Commission to impose equal access obligations on cellular licensees. Those comments focused on cellular service providers and did not address in detail equal access issues within the broader framework of the overall CMRS marketplace. While some of the comments filed in the more recent Commission rule making proceeding evaluating the CMRS marketplace address the costs and benefits of imposing equal access requirements on CMRS providers, we do not yet have a complete record on which to base final decisions. I believe that it is therefore necessary and appropriate for the Commission to seek a more comprehensive and focused record in this proceeding to facilitate resolution of equal access and interconnection issues regarding CMRS providers.

The Commission's tentative conclusion regarding equal access obligations for cellular licensees is the product of our present understanding of the current position of cellular service in the larger CMRS marketplace. That marketplace, however, is evolving rapidly towards a more competitive model. The Commission's action today in a separate decision addressing personal communications service underscores the dramatic evolution that is taking place in commercial mobile radio services. We do not know at this time precisely what new services will take hold, what new competitors will enter the CMRS market, or what new forms of competition will develop. These issues, which are not fully addressed in the current record, may present implications for the competitive position of cellular service providers within the broader CMRS marketplace.

Thus, I emphasize that today's tentative conclusion regarding equal access requirements for cellular licensees is just that -- tentative. I believe it is important for the Commission carefully to consider the evolving nature of competition in commercial mobile radio services generally, prior to reaching any final decisions in this proceeding regarding equal access and interconnection issues with respect to any CMRS provider. It is my hope and expectation that interested parties will submit comments that will enable the Commission to evaluate the tentative conclusion regarding equal access obligations for cellular licensees, and the other proposals contained in this Notice, in light of the evolving nature of the CMRS marketplace.

REPORT ON THE CABLE SERVICES BUREAU'S SURVEY ON THE RATE IMPACT OF THE FEDERAL COMMUNICATIONS COMMISSION'S REVISED RATE REGULATIONS

DA 94-767

Released: July 14, 1994

This report presents the results of the Cable Services Bureau's telephone survey of rates for regulated cable service provided by cable operators in the 25 largest U.S. cities. This survey was conducted in order to make an informal and preliminary assessment of the impact on rates of the Federal Communications Commission's revised cable rate regulations adopted pursuant to the Cable Television Consumer Protection and Competition Act of 1992.[1] Since the enactment of the Cable Television Consumer Protection and Competition Act of 1992, the Commission has completed two rate surveys which are more comprehensive than the informal survey being released today. The first rate survey, which was conducted in December 1992, provided the basis for the Commission's benchmark formula adopted on April 1, 1993.[2] The second rate survey was conducted in September 1993 in order to develop a better understanding of the rate changes after the effective date of the Commission's initial rate regulations.[3] This survey is limited to the 25 largest U.S. cities and does not assess the impact of the revised cable rates on small and/or rural communities.[4]

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[1] The survey being released today will not serve as a basis for Commission action. The Cable Services Bureau will conduct a further study of prices for regulated cable services later this year.

[2] *See Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5361, Appendix E (1993). Data for this survey was collected from 748 community units. This sample was comprised of: (1) a 1% random sample of cable community units; (2) cable community units that appeared to be in competition with at least one other multichannel video service provider; (3) cable community units in low penetration areas; and (4) cable community units in the 100 largest cable systems.

[3] *See* Cable Services Bureau, Federal Communications Commission, *FCC Cable Regulation Impact Survey, Changes in Cable Television Rates Between April 5, 1993 - September 1, 1993* (February 22, 1994). Data for the second survey was collected from the 10 largest benchmark-regulated systems of each of the 25 largest multiple system operators.

[4] The methodologies for these three surveys are different. To the extent the survey measures the impact of the Commission's revised rate rules, parties comparing the results of the surveys should recognize the limitations of each survey.

As demonstrated below, this survey shows that the 1992 Cable Act has resulted in savings to subscribers in the 25 largest U.S. cities. A comparison of rates in effect on August 31, 1993 (before regulation) with rates that will take effect on July 14, 1994 (the date on which restructured rates and services under the revised rate rules adopted on February 22, 1994 will generally be implemented) shows that the average rates for all regulated services and equipment declined. For example, by July 14, 1994, the "typical" subscriber[5] served by a cable system that was required to implement the full reduction rate,[6] will see rates drop an average of 16.46% since August 31, 1993. In addition, the average per channel rate for the "typical" subscriber served by any cable system in this sample will have dropped by 12.50% between August 31, 1993 and July 14, 1994. As further explained below, fundamental savings to cable subscribers are also demonstrated by a comparison of the rates taking effect on July 14, 1994 with rate increases that would have been made had the cable industry increased rates to the same extent that rates increased prior to regulation. Overall, the survey shows that in comparison to preregulation experience, consumers in these cities are paying less for the same or greater services under regulation.

The Commission's initial rate rules became effective September 1, 1993. Those rules required cable operators subject to regulation to set rates for equipment based on actual cost, and to reduce their September 1992 levels by up to 10% with adjustments for inflation and some external costs. (Operators with rates below a competitive benchmark level defined by the Commission or those subject to effective competition were not required to reduce rates.)

The Commission substantially revised its cable rate regulations in February 1994. Under the revised regulations, the Commission defined a full reduction rate based on a 17% reduction from September 1992 levels that all operators, other than small operators and systems that already offer subscribers services at relatively low prices ("low price systems"),[7]

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[5] A "typical" subscriber is defined as a household that receives basic service, the cable programming service (CPS) tier with the largest number of channels, one converter box, and one remote control.

[6] Full reduction rate systems are those that do not qualify for transition relief either as systems owned by small operators or as low price systems. These systems are required either (1) to set their rates at a level equal to their September 30, 1992 regulated revenues per subscriber reduced by the revised 17% competitive differential and adjusted for inflation, changes in external costs, and changes in the number of regulated channels, or (2) to submit a cost-of-service showing supporting higher rates.

[7] Low price systems are defined as (1) systems with March 31, 1994 rates at or below the revised benchmark and (2) systems having March 31, 1994 rates above the benchmark but having permitted rates at or below the benchmark. These systems are eligible for transition relief pursuant to the Commission's rules. Such systems are permitted to implement and maintain a "transition rate" pending the completion of a cost study by the Commission. The transition rate on May 15, 1994 for a system having a March 31, 1994 rate below its March

were required to implement. The Commission determined that it would conduct cost studies of small operators and low price systems before determining whether it should require those systems to make the full 17% reduction from 1992 rates. Most regulated operators will set new rates effective July 14, 1994.

In order to assess rate changes that will take place under the revised rate rules, the Cable Services Bureau initiated this survey of rates that were in effect on August 31, 1993, regulated rates in effect on May 14, 1994, and rates that will take effect on July 14, 1994. These dates were selected because August 31, 1993 is the day before the effective date of the Commission's initial rate regulations; May 14, 1994 is the last day the Commission's initial rate regulations were effective; and July 14, 1994 is the deadline for cable operators who elect the refund deferral period to restructure rates and services under the Commission's new rules.[8] This data allows for a comparison of rates that were in effect prior to regulation with rates that are currently in effect under the Commission's initial rules. This data also permits a comparison of rates in effect under the Commission's initial rules with rates that will take effect under the revised rules.

Cable operators in the 25 largest U.S. cities collectively serve about 4.5 million subscribers or approximately 8% of all cable subscribers in the United States. Although the cable operators in this survey represent a limited sample of the cable industry, the survey results provide a snapshot of the rates that will take effect on July 14, 1994 compared to the currently effective rates and the rates in effect prior to regulation. Later this year, the Cable Services Bureau will conduct a comprehensive price survey that will include a fully representative sample of the cable industry, including small systems.

The Cable Services Bureau surveyed all cable operators in the 25 largest U.S. cities by

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31, 1994 benchmark rate is generally the system's March 31, 1994 rate. The transition rate on May 15, 1994 for a system having a March 31, 1994 adjusted rate above its March 31, 1994 benchmark rate, but having a March 31, 1994 full reduction rate below its March 31, 1994 benchmark rate, is generally the March 31, 1994 benchmark rate.

[8] Cable operators who were subject to rate regulation on May 15, 1994 were not necessarily required to restructure their rates and services under the revised rules by that date. If eligible, they may postpone restructuring and take advantage of a refund deferral liability period to July 14, 1994. An operator may restructure its rates and services after May 15, 1994 without incurring refund liability prior to July 14, 1994, provided that: (1) it completes all rate and service restructuring and establishes a permitted rate by July 14, 1994; (2) it does not change its rates or restructure in any fashion any program service or equipment offering between May 15 and July 14, 1994; and (3) it gives at least 30 days notice to subscribers of any rate or service changes that the operator will make under the new rules. Small operators are not required to set rates in accordance with the revised rules until September 15, 1994.

telephone.[9] Each operator in this sample was asked to provide information on rates for basic service, each tier of cable programming services (CPS), and customer equipment. They were asked to submit rate cards to the Bureau for all three dates. In addition, cable operators were asked to report the number of channels used for basic service and each tier of CPS for these three dates. Finally, cable operators in this sample were asked to report the number of customers that subscribe to basic service and each tier of CPS on August 31, 1993 and according to the operators' most recent subscriber data. The accuracy of this report depends upon the accuracy of the information provided by cable operators in this sample. The information cable operators provided in this survey has not been independently verified by the Bureau.

This report presents the Bureau's findings on rate changes for three baskets of service and equipment in the 25 largest U.S. cities. First, the report calculates the weighted average monthly basic service rate per subscriber and determines how the weighted average rate will change on July 14, 1994 in relation to the average rates in effect on May 14, 1994 and August 31, 1993.[10] Second, the report calculates the average monthly rate per subscriber for basic service and the CPS tier with the largest number of channels offered by each operator. Third, the report assesses the impact of the Commission's new rules on a "typical" subscriber profile. For purposes of this report, a "typical" subscriber is defined as a household that receives basic service and the CPS tier with the largest number of channels, and has one converter box[11] and one remote control. This definition was chosen to present a portrait of the rate changes experienced by subscribers in these cities by incorporating a variety of services available from most cable systems. In calculating the average monthly rate per subscriber across systems for (1) basic service, (2) basic service and CPS, and (3) the "typical" subscriber, systems were weighted by their respective total subscribers for the basic service tier. The report also compares the average rates per channel for all three baskets of service.

The report sets forth changes in rates charged by all cable operators in the 25 largest

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[9] *See* Rand McNally, Commercial Atlas and Marketing Guide at 127 (1994).

[10] In some cases, programming service rates in effect on August 31, 1993 included bundled charges for equipment. Changes in programming service rates that took effect after August 31, 1993 may reflect in part the results of equipment unbundling required under the Commission's rules.

[11] Many cable operators in this sample offer both standard and addressable converter boxes at two different prices. The addressable converter box price is generally higher than the standard converter box price. If a cable operator offered only an addressable converter or both a standard and addressable converter box on August 31, 1993, this report used the addressable converter box price to calculate the rates for the typical subscriber on August 31, 1993, May 14, 1994 and July 14, 1994. If a cable operator offered only a standard converter box on August 31, 1993, this study used the standard converter box price for all three dates.

U.S. cities, for all regulated cable systems in the sample, for cable systems that have implemented the full reduction rate pursuant to the benchmark, for low price cable systems. for cable systems that have elected cost-of-service regulation,[12] and for cable systems that are unregulated,[13] as reported by operators.

Finally, the report compares the rates that will take effect on July 14, 1994 with the rates that would have taken effect had the cable industry increased rates at the same rate that they increased in the last full calendar year before regulation. According to the Consumer Price Index for Cable Television, provided by the Bureau of Labor Statistics, cable rates increased by 5.97% between December 1991 and December 1992.[14] This report uses this preregulation price index to provide an estimate of the full impact of the Commission's rate regulations.[15]

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[12] Regulated cable operators are permitted to elect cost-of-service regulation in lieu of benchmark regulation to ensure that they have the opportunity to recover all of their reasonable costs.

[13] Unregulated systems in this sample are systems for which (1) there is, or is alleged to be, effective competition, or (2) the franchising authority is not certified and no CPS complaint has been filed with the Commission.

[14] *See* Bureau of Labor Statistics, U.S. Dept. of Commerce, Consumer Price Index, Cable Television (1993).

[15] In making this calculation, the Cable Services Bureau compounded the price index on a monthly basis over the 11 month period between August 1993 and July 1994. Over this 11 month period the inflation adjustment is 5.64%.

FULL REDUCTION RATE SYSTEMS

Average Rate Impact

	May 14, 1994 to July 14, 1994		
	5/14 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$11.33	$10.53	-7.06%
Basic and CPS	$22.38	$20.96	-6.34%
Basic, CPS and Equip	$24.66	$23.19	-5.96%

	August 31, 1993 to July 14, 1994		
	8/31 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$11.15	$10.53	-5.56%
Basic and CPS	$22.92	$20.96	-8.55%
Basic, CPS and Equip	$27.76	$23.19	-16.46%

(Total Number of Subscribers: 1,478,618)[16]

This chart presents the results of the survey for cable systems in the sample that implemented the full reduction rate under the Commission's rules. These systems serve 32% of the subscribers in this sample. The chart presents the subscriber weighted average monthly rates for basic service, for basic service and CPS, and for the "typical" subscriber (households that receive basic service, CPS, one converter box and one remote control). It compares the rates in the 25 largest U.S. cities to be charged for these services on July 14, 1994 to the current rates and the rates that were in effect on August 31, 1993.

Full reduction rate systems are required to set rates based on a 17% reduction of their September 30, 1992 levels. The resulting figure is then adjusted by accounting for inflation, changes in external costs and changes in the number of regulated channels.

The results of this survey appear to confirm that the intended objectives of the

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[16] This category only includes data on 30,000 of the 320,000 subscribers of Cox Cable in San Diego because of the staggered introduction of a system upgrade that led to significant channel changes that differed across the system during the past year. The 30,000 subscribers that are included in this sample have not had their channel lineups altered during the past year.

Commission's rules are being accomplished by those systems required to implement full reduction rates. The average price, for example, for the "typical" cable subscriber in these cities has declined since cable rate regulation began. On July 14, 1994, the average monthly rate for a "typical" subscriber in systems that institute the full reduction rate will have declined by 16.46% since August 31, 1993 and by 5.96% since May 14, 1994. Moreover, the average rate per channel for the "typical" subscriber will have declined by 17.14% since August 31, 1993 and by 4.92% since May 14, 1994.[17]

Further, assuming cable operators in this group would have increased rates at the annual preregulation rate of 5.97% between August 31, 1993 and July 14, 1994, the average monthly rate for "typical" cable subscribers in this group would have been $29.33 on July 14, 1994, rather than the actual monthly average of $23.19. This represents a savings of nearly 21%.

[17] *See* Charts below.

LOW PRICE SYSTEMS

Average Rate Impact

	May 14, 1994 to July 14, 1994		
	5/14 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$10.00	$10.07	0.70%
Basic and CPS	$20.62	$20.54	-0.39%
Basic, CPS and Equip	$23.28	$23.32	0.17%

	August 31, 1993 to July 14, 1994		
	8/31 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$12.99	$10.07	-22.48%
Basic and CPS	$22.32	$20.54	-7.97%
Basic, CPS and Equip	$23.62	$23.32	-1.27%

(Total Number of Subscribers: 1,622,704)

This chart presents the results of the survey for low price systems. Low price systems serve 36% of the subscribers in this sample. Under the Commission's revised rules, low price systems are not required to reduce their rates if their rates on March 31, 1994 were below the revised benchmark rate. Low price systems with March 31, 1994 rates above the benchmark but whose full reduction rate would be below the benchmark are only required to reduce their rates to the benchmark at this time. In further proceedings, the Commission will study the costs of low price systems and compare those costs with the prices that low price systems charge for regulated services and equipment. After this additional analysis is complete the Commission will determine whether low price systems will be required to reduce their rates in accordance with the competitive differential.

As expected, average rates among low price systems in the 25 largest U.S. cities will not change significantly between May 14, 1994 and July 14, 1994. The average monthly price for the "typical" subscriber served by a low price system will have increased by 0.17% since May 14, 1994. In addition, there was no change in the per channel rate for the "typical" subscriber between May 14, 1994 and July 14, 1994.[18]

[18] *See* Charts below.

Between August 31, 1993 and July 14, 1994, however, the average monthly price for the "typical" subscriber to a low price system will decrease by 1.27%. The average number of channels for the "typical" subscriber, however, will have increased by 20% between August 31, 1993 and July 14, 1994.[19] As a result, the per channel rate for typical subscribers will have decreased by 14.58% between August 31, 1993 and July 14, 1994.[20]

Assuming cable operators in this group would have increased rates at the annual preregulation rate of 5.97% between August 31, 1993 and July 14, 1994, the average monthly rate for cable subscribers in this group would have been $24.95 on July 14, 1994, rather than the actual monthly average rate of $23.32. This represents a savings of 6.53%.

COST-OF-SERVICE SYSTEMS

Average Rate Impact

	May 14, 1994 to July 14, 1994		
	5/14 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$9.90	$9.90	0.00%
Basic and CPS	$22.39	$22.39	0.00%
Basic, CPS and Equip	$24.64	$24.64	0.00%

	August 31, 1993 to July 14, 1994		
	8/31 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$9.69	$9.90	2.17%
Basic and CPS	$20.67	$22.39	8.32%
Basic, CPS and Equip	$23.73	$24.64	3.83%

(Total Number of Subscribers: 644,343)

This chart presents the results of the survey for cable operators that elected cost-of-service regulation. These operators serve 14% of the subscribers in the sample. Cable operators that elect cost-of-service regulation are not required to reduce their rates to the full reduction rate.

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[19] The Cable Services Bureau collected data on the number of channels from all cable operators in the sample. The Bureau used this data to calculate the percentage change in channels and per channel rates.

[20] *See* Charts below.

Such cable operators may attempt to justify their existing rates by showing that these rates are necessary for the recovery of all reasonable costs. Under the Commission's rules, rates for cable operators that elect cost-of-service regulation may remain constant while these operators' cost justification showings are being reviewed by local franchising authorities and the Cable Services Bureau. The survey shows that there will be no rate changes for cost-of-service systems between May 14, 1994 and July 14, 1994.

Between August 31, 1993 and July 14, 1994 rates for the "typical" subscriber will have increased by 3.83%. This increase is due largely to rate and service restructurings by two of the six cost-of-service systems in the sample. The changes made by one of these systems greatly skews the overall subscriber weighted results because the system serves more than 31% of all subscribers in the cost-of-service group.

UNREGULATED SYSTEMS

Average Rate Impact

	May 14, 1994 to July 14, 1994		
	5/14 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$11.74	$11.74	0.00%
Basic and CPS	$20.80	$20.80	0.00%
Basic, CPS and Equip	$23.95	$23.95	0.00%

	August 31, 1993 to July 14, 1994		
	8/31 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$11.34	$11.74	3.53%
Basic and CPS	$21.42	$20.80	-2.89%
Basic, CPS and Equip	$24.08	$23.95	-0.54%

(Total Number of Subscribers: 748,816)

This chart presents the results of the survey for cable operators in the sample that are unregulated. These operators serve 16% of the subscribers in the sample. Unregulated cable operators in this sample are systems for which (1) there is, or is alleged to be, effective competition, or (2) the franchising authority is not certified and no CPS complaint has been filed with the Commission. In general, our survey showed negligible rate changes for unregulated systems in the 25 largest U.S. cities.

ALL REGULATED CABLE SYSTEMS IN THE 25 LARGEST U.S. CITIES

Average Rate Impact

	May 14, 1994 to July 14, 1994		
	5/14 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$10.48	$10.21	-2.58%
Basic and CPS	$21.59	$21.02	-2.64%
Basic, CPS and Equip	$24.03	$23.50	-2.21%

	August 31, 1993 to July 14, 1994		
	8/31 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$11.72	$10.21	-12.88%
Basic and CPS	$22.25	$21.02	-5.53%
Basic, CPS and Equip	$25.17	$23.50	-6.63%

(Total Number of Subs: 3,745,665)

This chart presents the results of the survey for all regulated cable systems in the sample. It includes, therefore, all systems except those that have been categorized as unregulated systems. Regulated systems serve 84% of the subscribers covered by the survey. Because this group includes low price systems and cost-of-service systems, as well as full reduction rate systems, the average price reductions for this category will not be as high as for the category of cable operators that are required to make full competitive rate reductions.

Subscribers served by all regulated systems will, nevertheless, realize rate reductions on July 14, 1994. Between August 31, 1993 and July 14, 1994, the average rates for the "typical" subscriber will have declined an average of 6.63%. Moreover, the average rates for the "typical" subscriber will have declined 2.21% between May 14, 1994 and July 14, 1994. On July 14, 1994, the per channel rate for the typical subscriber will have declined by 12.50% since August 31, 1993 and by 2.00% since May 14, 1994.[21]

Assuming cable operators in this group would have increased rates at the annual rate of 5.97% between August 31, 1993 and July 14, 1994, the average monthly rate for cable subscribers in this group would have been $26.59 on July 14, 1994, rather than the actual

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[21] *See* Charts below.

monthly average rate of $23.50. This represents a savings of 11.62% .

ALL CABLE SYSTEMS IN THE 25 LARGEST U.S. CITIES

Average Rate Impact

	May 14, 1994 to July 14, 1994		
	5/14 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$10.68	$10.45	-2.15%
Basic and CPS	$21.47	$20.99	-2.24%
Basic, CPS and Equip	$24.02	$23.58	-1.83%

	August 31, 1993 to July 14, 1994		
	8/31 monthly rate	7/14 monthly rate	%chg monthly rate
Basic	$11.66	$10.45	-10.38%
Basic and CPS	$22.12	$20.99	-5.11%
Basic, CPS and Equip	$25.00	$23.58	-5.68%

(Total Number of Subs: 4,494,481)[22]

This chart presents the survey results for all cable systems in the sample. It reflects lesser rate reductions than operators required to make full competitive rate reductions because only 32% of the subscribers in this sample are served by cable systems that are required to make such rate reductions. Nevertheless, the average rates among all cable subscribers in the 25 largest U.S. cities will decrease for all three baskets of services for which the Cable Services Bureau conducted its analysis. Between August 31, 1993 and July 14, 1994, the average rates for the "typical" subscriber in the 25 largest U.S. cities will have declined an average of 5.68%. Moreover, the average rates for these services will have declined 1.83% between May 14, 1994 and July 14, 1994. On July 14, 1994, the per channel rate for the typical subscriber will have declined by 12.50% since August 31, 1993 and by 3.92% since May 14, 1994.[23]

Assuming cable operators in this sample would have increased rates at the annual preregulation rate of 5.97% between August 31, 1993 and July 14, 1994, the average monthly

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[22] See supra note 16.

[23] *See* Charts below.

rate for cable subscribers in this sample would have been $26.41 on July 14, 1994, rather than the actual average monthly rate of $23.58. This represents a savings of 10.72%.

ATTACHED CHARTS

Attached are 29 charts that support the findings of this report. The first chart summarizes the findings of this study for the following categories of cable systems: (1) all cable systems in the sample; (2) all regulated cable systems; (3) full reduction rate systems; (4) low price systems; (5) cost-of-service systems; and (6) unregulated systems. The other 28 charts analyze the data for the individual systems categorized as full reduction rate systems, low price systems, cost-of-service systems, and unregulated systems. The following are the seven types of charts that are included for each of the four cable system categories: (1) monthly rates for the "typical" subscriber (households that receive basic, CPS, one converter box and one remote control); (2) monthly rates for basic service; (3) monthly rates for basic service and CPS; (4) the average monthly per channel price for the "typical" subscriber; (5) the average monthly per channel price for basic service; (6) the average monthly per channel price for CPS; and (7) the average monthly per channel price for basic and CPS.

SUMMARY TABLE

MONTHLY RATE CHANGES

BASIC

DATE	ALL SYSTEMS	ALL REGULATED	FULL REDUCTION	LOW-PRICE	COST OF SERVICE	UN-REGULATED
8.31 93	$11.66	$11.72	$11.15	$12.99	$9.69	$11.34
5/14/94	$10.68	$10.48	$11.33	$10.00	$9.90	$11.74
7 14.94	$10.45	$10.21	$10.53	$10.07	$9.90	$11.74
%Chg:Aug-Jul	-10.38%	-12.88%	-5.56%	-22.48%	2.17%	3.53%
%Chg:May-Jul	-2.15%	-2.58%	-7.06%	0.70%	0.00%	0.00%

BASIC and CABLE PROGRAMMING SERVICE

DATE	ALL SYSTEMS	ALL REGULATED	FULL REDUCTION	LOW-PRICE	COST OF SERVICE	UN-REGULATED
8/31/93	$22.12	$22.25	$22.92	$22.32	$20.67	$21.42
5/14/94	$21.47	$21.59	$22.38	$20.62	$22.39	$20.80
7/14/94	$20.99	$21.02	$20.96	$20.54	$22.39	$20.80
%Chg:Aug-Jul	-5.11%	-5.53%	-8.55%	-7.97%	8.32%	-2.89%
%Chg:May-Jul	-2.24%	-2.64%	-6.34%	-0.39%	0.00%	0.00%

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

DATE	ALL SYSTEMS	ALL REGULATED	FULL REDUCTION	LOW-PRICE	COST OF SERVICE	UN-REGULATED
8/31/93	$25.00	$25.17	$27.76	$23.62	$23.73	$24.08
5/14/94	$24.02	$24.03	$24.66	$23.28	$24.64	$23.95
7/14/94	$23.58	$23.50	$23.19	$23.32	$24.64	$23.95
%Chg:Aug-Jul	-5.68%	-6.63%	-16.46%	-1.27%	3.83%	-0.54%
%Chg:May-Jul	-1.83%	-2.21%	-5.96%	0.17%	0.00%	0.00%

SUMMARY TABLE
MONTHLY PER CHANNEL RATE CHANGES

BASIC

DATE	ALL SYSTEMS	ALL REGULATED	FULL REDUCTION	LOW-PRICE	COST OF SERVICE	UN-REGULATED
8/31/93	$0.52	$0.54	$0.63	$0.50	$0.42	$0.44
5/14/94	$0.45	$0.45	$0.56	$0.37	$0.42	$0.43
7/14/94	$0.43	$0.43	$0.52	$0.37	$0.42	$0.43
%Chg:Aug-Jul	-17.31%	-20.37%	-17.46%	-26.00%	0.00%	-2.27%
%Chg:May-Jul	-4.44%	-4.44%	-7.14%	0.00%	0.00%	0.00%

CABLE PROGRAMMING SERVICE

DATE	ALL SYSTEMS	ALL REGULATED	FULL REDUCTION	LOW-PRICE	COST OF SERVICE	UN-REGULATED
8/31/93	$0.46	$0.47	$0.56	$0.39	$0.48	$0.41
5/14/94	$0.45	$0.46	$0.55	$0.36	$0.49	$0.39
7/14/94	$0.44	$0.44	$0.52	$0.36	$0.49	$0.39
%Chg:Aug-Jul	-4.35%	-6.38%	-7.14%	-7.69%	2.08%	-4.88%
%Chg:May-Jul	-2.22%	-4.35%	-5.45%	0.00%	0.00%	0.00%

BASIC and CABLE PROGRAMMING SERVICE

DATE	ALL SYSTEMS	ALL REGULATED	FULL REDUCTION	LOW-PRICE	COST OF SERVICE	UN-REGULATED
8/31/93	$0.49	$0.49	$0.58	$0.45	$0.44	$0.46
5/14/94	$0.45	$0.46	$0.56	$0.37	$0.46	$0.44
7/14/94	$0.44	$0.44	$0.52	$0.37	$0.46	$0.44
%Chg:Aug-Jul	-10.20%	-10.20%	-10.34%	-17.78%	4.55%	-4.35%
%Chg:May-Jul	-2.22%	-4.35%	-7.14%	0.00%	0.00%	0.00%

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

DATE	ALL SYSTEMS	ALL REGULATED	FULL REDUCTION	LOW-PRICE	COST OF SERVICE	UN-REGULATED
8/31/93	$0.56	$0.56	$0.70	$0.48	$0.51	$0.51
5/14/94	$0.50	$0.50	$0.61	$0.41	$0.50	$0.51
7/14/94	$0.49	$0.49	$0.58	$0.41	$0.50	$0.51
%Chg:Aug-Jul	-12.50%	-12.50%	-17.14%	-14.58%	-1.96%	0.00%
%Chg:May-Jul	-2.00%	-2.00%	-4.92%	0.00%	0.00%	0.00%

FULL REDUCTION RATE SYSTEMS

MONTHLY PER CHANNEL RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

FULL REDUCTION

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Cleveland	Cablevision	$0.47	$0.49	$0.48	2.13%	-2.04%
Columbus	Time Warner	$0.86	$0.50	$0.48	-44.19%	-4.00%
Columbus	Coaxial	$0.86	$0.72	$0.62	-27.91%	-13.89%
El Paso	Paragon	$0.62	$0.58	$0.53	-14.52%	-8.62%
Houston	Time Warner	$0.71	$0.71	$0.65	-8.45%	-8.45%
Indianapolis	Time Warner	$0.75	$0.63	$0.59	-21.33%	-6.35%
Los Angeles	Century Comm	$0.86	$0.77	$0.67	-22.09%	-12.99%
Memphis	Time Warner	$0.76	$0.77	$0.74	-2.63%	-3.90%
Milwaukee	Time Warner	$0.58	$0.52	$0.49	-15.52%	-5.77%
Nashville	Viacom	$0.95	$0.77	$0.72	-24.21%	-6.49%
San Diego	Cox Cable	$0.87	$0.78	$0.78	-10.34%	0.00%
San Diego	Time Warner	$0.65	$0.65	$0.62	-4.62%	-4.62%
San Francisco	Viacom	$0.79	$0.54	$0.51	-35.44%	-5.56%
San Jose	TCI	$0.57	$0.45	$0.42	-26.32%	-6.67%
Staten Island	Time Warner	$0.43	$0.43	$0.41	-4.65%	-4.65%
Weighted Average:		**$0.70**	**$0.61**	**$0.58**	**-17.14%**	**-4.92%**

MONTHLY RATE CHANGES

BASIC

FULL REDUCTION

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Cleveland	Cablevision	$6.85	$11.13	$10.70	56.20%	-3.86%
Columbus	Time Warner	$9.95	$11.00	$10.57	6.23%	-3.91%
Columbus	Coaxial	$14.95	$13.46	$10.36	-30.70%	-23.03%
El Paso	Paragon	$9.95	$7.78	$7.00	-29.65%	-10.03%
Houston	Time Warner	$9.95	$11.95	$10.76	8.14%	-9.96%
Indianapolis	Time Warner	$9.95	$10.37	$9.68	-2.71%	-6.65%
Los Angeles	Century Comm	$16.30	$23.25	$21.07	29.26%	-9.38%
Memphis	Time Warner	$12.50	$10.55	$9.76	-21.92%	-7.49%
Milwaukee	Time Warner	$9.93	$11.07	$10.89	9.67%	-1.63%
Nashville	Viacom	$10.00	$9.00	$8.23	-17.70%	-8.56%
San Diego	Cox Cable	$14.85	$12.85	$12.17	-18.05%	-5.29%
San Diego	Time Warner	$10.84	$10.84	$10.01	-7.66%	-7.66%
San Francisco	Viacom	$13.00	$13.28	$12.24	-5.85%	-7.83%
San Jose	TCI	$10.50	$11.23	$10.48	-0.19%	-6.68%
Staten Island	Time Warner	$15.95	$11.00	$10.65	-33.23%	-3.18%
Weighted Average:		**$11.16**	**$11.33**	**$10.53**	**-5.56%**	**-7.06%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

FULL REDUCTION

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Cleveland	Cablevision	$0.40	$0.43	$0.42	5.00%	-2.33%
Columbus	Time Warner	$0.72	$0.43	$0.41	-43.06%	-4.65%
Columbus	Coaxial	$0.66	$0.67	$0.59	-10.61%	-11.94%
El Paso	Paragon	$0.58	$0.56	$0.50	-13.79%	-10.71%
Houston	Time Warner	$0.62	$0.66	$0.60	-3.23%	-9.09%
Indianapolis	Time Warner	$0.62	$0.61	$0.57	-8.06%	-6.56%
Los Angeles	Century Comm	$0.67	$0.69	$0.64	-4.48%	-7.25%
Memphis	Time Warner	$0.64	$0.70	$0.68	6.25%	-2.86%
Milwaukee	Time Warner	$0.49	$0.44	$0.41	-16.33%	-6.82%
Nashville	Viacom	$0.71	$0.64	$0.59	-16.90%	-7.81%
San Diego	Cox Cable	$0.74	$0.71	$0.67	-9.46%	-5.63%
San Diego	Time Warner	$0.60	$0.60	$0.57	-5.00%	-5.00%
San Francisco	Viacom	$0.56	$0.49	$0.46	-17.86%	-6.12%
San Jose	TCI	$0.43	$0.43	$0.40	-6.98%	-6.98%
Staten Island	Time Warner	$0.43	$0.38	$0.36	-16.28%	-5.26%
Weighted Average:		**$0.58**	**$0.56**	**$0.52**	**-10.34%**	**-7.14%**

MONTHLY RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

FULL REDUCTION

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Cleveland	Cablevision	$22.85	$23.57	$23.23	1.66%	-1.44%
Columbus	Time Warner	$24.90	$22.88	$21.86	-12.21%	-4.46%
Columbus	Coaxial	$33.50	$30.23	$24.65	-26.42%	-18.46%
El Paso	Paragon	$23.58	$21.04	$19.05	-19.21%	-9.46%
Houston	Time Warner	$24.00	$24.07	$21.95	-8.54%	-8.81%
Indianapolis	Time Warner	$28.45	$22.60	$21.28	-25.20%	-5.84%
Los Angeles	Century Comm	$32.86	$32.91	$28.79	-12.39%	-12.52%
Memphis	Time Warner	$25.00	$23.10	$22.31	-10.76%	-3.42%
Milwaukee	Time Warner	$27.18	$24.59	$22.76	-16.26%	-7.44%
Nashville	Viacom	$31.30	$26.25	$24.61	-21.37%	-6.25%
San Diego	Cox Cable	$26.90	$24.28	$24.14	-10.26%	-0.58%
San Diego	Time Warner	$24.80	$24.80	$23.55	-5.04%	-5.04%
San Francisco	Viacom	$36.90	$27.23	$25.62	-30.57%	-5.91%
San Jose	TCI	$33.42	$26.45	$24.80	-25.79%	-6.24%
Staten Island	Time Warner	$22.95	$22.35	$22.13	-3.57%	-0.98%
Weighted Average:		**$27.76**	**$24.66**	**$23.19**	**-16.46%**	**-5.96%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC

FULL REDUCTION

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Cleveland	Cablevision	$0.26	$0.43	$0.41	57.69%	-4.65%
Columbus	Time Warner	$0.90	$0.42	$0.41	-54.44%	-2.38%
Columbus	Coaxial	$1.25	$0.67	$0.94	-24.80%	40.30%
El Paso	Paragon	$0.66	$0.56	$0.50	-24.24%	-10.71%
Houston	Time Warner	$0.55	$0.66	$0.60	9.09%	-9.09%
Indianapolis	Time Warner	$0.55	$0.61	$0.57	3.64%	-6.56%
Los Angeles	Century Comm	$0.74	$0.75	$0.68	-8.11%	-9.33%
Memphis	Time Warner	$1.14	$0.70	$0.65	-42.98%	-7.14%
Milwaukee	Time Warner	$0.40	$0.41	$0.40	0.00%	-2.44%
Nashville	Viacom	$0.77	$0.64	$0.59	-23.38%	-7.81%
San Diego	Cox Cable	$0.99	$0.71	$0.68	-31.31%	-4.23%
San Diego	Time Warner	$0.60	$0.60	$0.56	-6.67%	-6.67%
San Francisco	Viacom	$0.52	$0.49	$0.45	-13.46%	-8.16%
San Jose	TCI	$0.40	$0.43	$0.40	0.00%	-6.98%
Staten Island	Time Warner	$0.59	$0.39	$0.37	-37.29%	-5.13%
Weighted Average:		$0.63	$0.56	$0.52	-17.46%	-7.14%

MONTHLY PER CHANNEL RATE CHANGES

CABLE PROGRAMMING SERVICE

FULL REDUCTION

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Cleveland	Cablevision	$0.55	$0.43	$0.43	-21.82%	0.00%
Columbus	Time Warner	$0.61	$0.44	$0.41	-32.79%	-6.82%
Columbus	Coaxial	$0.41	$0.67	$0.45	9.76%	-32.84%
El Paso	Paragon	$0.52	$0.56	$0.50	-3.85%	-10.71%
Houston	Time Warner	$0.69	$0.66	$0.61	-11.59%	-7.58%
Indianapolis	Time Warner	$0.68	$0.61	$0.58	-14.71%	-4.92%
Los Angeles	Century Comm	$0.57	$0.53	$0.53	-7.02%	0.00%
Memphis	Time Warner	$0.39	$0.70	$0.70	79.49%	0.00%
Milwaukee	Time Warner	$0.59	$0.49	$0.43	-27.12%	-12.24%
Nashville	Viacom	$0.67	$0.64	$0.60	-10.45%	-6.25%
San Diego	Cox Cable	$0.51	$0.71	$0.67	31.37%	-5.63%
San Diego	Time Warner	$0.60	$0.60	$0.58	-3.33%	-3.33%
San Francisco	Viacom	$0.61	$0.49	$0.47	-22.95%	-4.08%
San Jose	TCI	$0.45	$0.43	$0.40	-11.11%	-6.98%
Staten Island	Time Warner	$0.27	$0.36	$0.35	29.63%	-2.78%
Weighted Average:		**$0.56**	**$0.55**	**$0.52**	**-7.14%**	**-5.45%**

MONTHLY RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

FULL REDUCTION

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Cleveland	Cablevision	$19.60	$20.54	$20.20	3.06%	-1.66%
Columbus	Time Warner	$20.95	$19.81	$18.79	-10.31%	-5.15%
Columbus	Coaxial	$25.90	$28.27	$23.49	-9.31%	-16.91%
El Paso	Paragon	$22.00	$20.00	$18.01	-18.14%	-9.95%
Houston	Time Warner	$21.00	$22.58	$20.46	-2.57%	-9.39%
Indianapolis	Time Warner	$23.45	$21.96	$20.64	-11.98%	-6.01%
Los Angeles	Century Comm	$25.40	$29.55	$27.37	7.76%	-7.38%
Memphis	Time Warner	$21.00	$21.10	$20.31	-3.29%	-3.74%
Milwaukee	Time Warner	$22.90	$20.81	$19.02	-16.94%	-8.60%
Nashville	Viacom	$23.30	$21.86	$20.22	-13.22%	-7.50%
San Diego	Cox Cable	$22.95	$22.13	$20.89	-8.98%	-5.60%
San Diego	Time Warner	$22.82	$22.82	$21.57	-5.48%	-5.48%
San Francisco	Viacom	$26.40	$24.60	$22.99	-12.92%	-6.54%
San Jose	TCI	$25.47	$25.49	$23.81	-6.52%	-6.59%
Staten Island	Time Warner	$22.95	$19.73	$19.51	-14.99%	-1.12%
Weighted Average:		**$22.92**	**$22.38**	**$20.96**	**-8.55%**	**-6.34%**

LOW PRICE SYSTEMS

MONTHLY RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

LOW PRICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Baltimore	TCI	$20.00	$22.52	$23.04	15.20%	2.31%
Boston	Cablevision	$20.90	$22.95	$22.95	9.81%	0.00%
Bronx	Cablevision	$23.90	$25.01	$25.01	4.64%	0.00%
Brooklyn/Queens	Time Warner	$25.53	$22.65	$22.65	-11.28%	0.00%
Los Angeles	TCI	$22.35	$22.31	$23.67	5.91%	6.10%
Manhattan	Time Warner	$21.95	$23.58	$23.58	7.43%	0.00%
Manhattan	Paragon	$21.95	$23.65	$23.65	7.74%	0.00%
Philadelphia	Greater Media	$23.75	$23.27	$23.27	-2.02%	0.00%
Philadelphia	Comcast	$25.99	$21.95	$22.06	-15.12%	0.50%
Queens	Time Warner	$23.95	$24.10	$24.10	0.63%	0.00%
San Antonio	Paragon Cable	$26.70	$22.88	$22.62	-15.28%	-1.14%
Seattle	TCI	$25.96	$20.68	$18.69	-28.00%	-9.62%
Weighted Average:		$23.62	$23.28	$23.32	-1.27%	0.17%

MONTHLY RATE CHANGES

BASIC

LOW PRICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Baltimore	TCI	$17.35	$10.00	$7.88	-54.58%	-21.20%
Boston	Cablevision	$9.95	$7.52	$8.82	-11.36%	17.29%
Bronx	Cablevision	$9.95	$9.18	$9.95	0.00%	8.39%
Brooklyn/Queens	Time Warner	$14.95	$11.07	$11.07	-25.95%	0.00%
Los Angeles	TCI	$10.00	$9.83	$9.67	-3.30%	-1.63%
Manhattan	Time Warner	$14.95	$11.27	$11.27	-24.62%	0.00%
Manhattan	Paragon	$14.95	$10.40	$10.40	-30.43%	0.00%
Philadelphia	Greater Media	$9.95	$13.12	$13.12	31.86%	0.00%
Philadelphia	Comcast	$10.00	$7.72	$8.14	-18.60%	5.44%
Queens	Time Warner	$14.95	$11.07	$11.07	-25.95%	0.00%
San Antonio	Paragon Cable	$13.50	$9.10	$8.84	-34.52%	-2.86%
Seattle	TCI	$10.50	$10.28	$9.28	-11.62%	-9.73%
Weighted Average:		**$12.99**	**$10.00**	**$10.07**	**-22.48%**	**0.70%**

MONTHLY RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

LOW PRICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Baltimore	TCI	$18.00	$21.48	$20.49	13.83%	-4.61%
Boston	Cablevision	$20.90	$21.10	$21.10	0.96%	0.00%
Bronx	Cablevision	$21.95	$22.18	$22.18	1.05%	0.00%
Brooklyn/Queens	Time Warner	$23.95	$20.86	$20.86	-12.90%	0.00%
Los Angeles	TCI	$19.40	$21.02	$20.68	6.60%	-1.62%
Manhattan	Time Warner	$21.95	$20.14	$20.14	-8.25%	0.00%
Manhattan	Paragon	$21.95	$20.13	$20.13	-8.29%	0.00%
Philadelphia	Greater Media	$23.75	$20.16	$20.16	-15.12%	0.00%
Philadelphia	Comcast	$25.99	$18.71	$19.20	-26.13%	2.62%
Queens	Time Warner	$23.95	$20.86	$20.86	-12.90%	0.00%
San Antonio	Paragon Cable	$21.75	$20.33	$20.07	-7.72%	-1.28%
Seattle	TCI	$20.96	$19.96	$18.02	-14.03%	-9.72%
Weighted Average:		**$22.32**	**$20.62**	**$20.54**	**-7.97%**	**-0.39%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

LOW PRICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Baltimore	TCI	$0.40	$0.42	$0.43	7.50%	2.38%
Boston	Cablevision	$0.40	$0.44	$0.44	10.00%	0.00%
Bronx	Cablevision	$0.44	$0.44	$0.44	0.00%	0.00%
Brooklyn/Queens	Time Warner	$0.45	$0.34	$0.34	-24.44%	0.00%
Los Angeles	TCI	$0.38	$0.38	$0.40	5.26%	5.26%
Manhattan	Time Warner	$0.49	$0.38	$0.38	-22.45%	0.00%
Manhattan	Paragon	$0.52	$0.39	$0.39	-25.00%	0.00%
Philadelphia	Greater Media	$0.38	$0.37	$0.37	-2.63%	0.00%
Philadelphia	Comcast	$0.43	$0.35	$0.35	-18.60%	0.00%
Queens	Time Warner	$0.42	$0.37	$0.37	-11.90%	0.00%
San Antonio	Paragon Cable	$0.70	$0.60	$0.60	-14.29%	0.00%
Seattle	TCI	$0.79	$0.63	$0.57	-27.85%	-9.52%
Weighted Average:		**$0.48**	**$0.41**	**$0.41**	**-14.58%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC

LOW PRICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Baltimore	TCI	$0.39	$0.48	$0.38	-2.56%	-20.83%
Boston	Cablevision	$0.52	$0.40	$0.40	-23.08%	0.00%
Bronx	Cablevision	$0.43	$0.38	$0.41	-4.65%	7.89%
Brooklyn/Queens	Time Warner	$0.50	$0.32	$0.32	-36.00%	0.00%
Los Angeles	TCI	$0.38	$0.38	$0.37	-2.63%	-2.63%
Manhattan	Time Warner	$0.58	$0.33	$0.33	-43.10%	0.00%
Manhattan	Paragon	$0.60	$0.34	$0.34	-43.33%	0.00%
Philadelphia	Greater Media	$0.24	$0.32	$0.32	33.33%	0.00%
Philadelphia	Comcast	$0.34	$0.30	$0.30	-11.76%	0.00%
Queens	Time Warner	$0.50	$0.32	$0.32	-36.00%	0.00%
San Antonio	Paragon Cable	$0.71	$0.54	$0.52	-26.76%	-3.70%
Seattle	TCI	$0.62	$0.60	$0.55	-11.29%	-8.33%
Weighted Average:		**$0.50**	**$0.37**	**$0.37**	**-26.00%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

CABLE PROGRAMMING SERVICE

LOW PRICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Baltimore	TCI	$0.13	$0.36	$0.39	200.00%	8.33%
Boston	Cablevision	$0.33	$0.41	$0.41	24.24%	0.00%
Bronx	Cablevision	$0.39	$0.39	$0.37	-5.13%	-5.13%
Brooklyn/Queens	Time Warner	$0.34	$0.32	$0.32	-5.88%	0.00%
Los Angeles	TCI	$0.28	$0.34	$0.33	17.86%	-2.94%
Manhattan	Time Warner	$0.38	$0.32	$0.32	-15.79%	0.00%
Manhattan	Paragon	$0.41	$0.34	$0.34	-17.07%	0.00%
Philadelphia	Greater Media	$0.63	$0.32	$0.32	-49.21%	0.00%
Philadelphia	Comcast	$0.52	$0.30	$0.31	-40.38%	3.33%
Queens	Time Warner	$0.33	$0.32	$0.32	-3.03%	0.00%
San Antonio	Paragon Cable	$0.43	$0.53	$0.53	23.26%	0.00%
Seattle	TCI	$0.65	$0.61	$0.55	-15.38%	-9.84%
Weighted Average:		**$0.39**	**$0.36**	**$0.36**	**-7.69%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

LOW PRICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	May-Jul
Baltimore	TCI	$0.36	$0.41	$0.39	8.33%	-4.88%
Boston	Cablevision	$0.40	$0.41	$0.41	2.50%	0.00%
Bronx	Cablevision	$0.41	$0.39	$0.39	-4.88%	0.00%
Brooklyn/Queens	Time Warner	$0.42	$0.32	$0.32	-23.81%	0.00%
Los Angeles	TCI	$0.33	$0.36	$0.35	6.06%	-2.78%
Manhattan	Time Warner	$0.49	$0.32	$0.32	-34.69%	0.00%
Manhattan	Paragon	$0.52	$0.34	$0.34	-34.62%	0.00%
Philadelphia	Greater Media	$0.38	$0.32	$0.32	-15.79%	0.00%
Philadelphia	Comcast	$0.43	$0.30	$0.30	-30.23%	0.00%
Queens	Time Warner	$0.42	$0.32	$0.32	-23.81%	0.00%
San Antonio	Paragon Cable	$0.57	$0.54	$0.53	-7.02%	-1.85%
Seattle	TCI	$0.64	$0.60	$0.55	-14.06%	-8.33%
Weighted Average:		**$0.45**	**$0.37**	**$0.37**	**-17.78%**	**0.00%**

COST-OF-SERVICE SYSTEMS

MONTHLY RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

COST OF SERVICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	TCI	$25.52	$23.85	$23.85	-6.54%	0.00%
Jacksonville	Continental Cabl	$15.15	$24.98	$24.98	64.88%	0.00%
Los Angeles (J)	Continental	$24.20	$24.48	$24.48	1.16%	0.00%
New Orleans	Cox Cable	$34.90	$24.07	$24.07	-31.03%	0.00%
Philadelphia	Wade Comm	$23.60	$24.11	$24.11	2.16%	0.00%
Washington, D.C	TCI	$26.66	$26.66	$26.66	0.00%	0.00%
Weighted Average:		**$23.73**	**$24.64**	**$24.64**	**3.83%**	**0.00%**

MONTHLY RATE CHANGES

BASIC

UNREGULATED

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	Prime Cable	$8.95	$10.50	$10.50	17.32%	0.00%
Dallas	TCI	$9.52	$9.52	$9.52	0.00%	0.00%
Detroit	Barden Comm	$19.85	$22.03	$22.03	10.98%	0.00%
Houston	TCI	$10.00	$9.70	$9.70	-3.00%	0.00%
Los Angeles (I)	Continental	$9.85	$8.92	$8.92	-9.44%	0.00%
Los Angeles (K)	Continental	$9.85	$8.10	$8.10	-17.77%	0.00%
Phoenix	Insight Cablevisi	$3.95	$9.15	$9.15	131.65%	0.00%
Phoenix	Dimension Cable	$9.90	$9.90	$9.90	0.00%	0.00%
Seattle	Summit Comm	$22.95	$24.08	$24.08	4.92%	0.00%
Staten Island	Americable	$26.95	$26.95	$26.95	0.00%	0.00%
Washington, D.C	Chesapeake Cabl	$8.95	$8.95	$8.95	0.00%	0.00%
Weighted Average:		**$11.34**	**$11.74**	**$11.74**	**3.53%**	**0.00%**

MONTHLY RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

COST OF SERVICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	TCI	$21.72	$22.58	$22.58	3.96%	0.00%
Jacksonville	Continental Cabl	$12.90	$23.34	$23.34	80.93%	0.00%
Los Angeles (J)	Continental	$21.05	$21.03	$21.03	-0.10%	0.00%
New Orleans	Cox Cable	$30.90	$21.60	$21.60	-30.10%	0.00%
Philadelphia	Wade Comm	$23.60	$20.86	$20.86	-11.61%	0.00%
Washington, D.C	TCI	$22.66	$22.66	$22.66	0.00%	0.00%
Weighted Average:		**$20.67**	**$22.39**	**$22.39**	**8.32%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

COST OF SERVICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	TCI	$0.45	$0.42	$0.42	-6.67%	0.00%
Jacksonville	Continental Cabl	$0.43	$0.59	$0.59	37.21%	0.00%
Los Angeles (J)	Continental	$0.51	$0.53	$0.53	3.92%	0.00%
New Orleans	Cox Cable	$0.81	$0.52	$0.52	-35.80%	0.00%
Philadelphia	Wade Comm	$0.41	$0.38	$0.38	7.32%	0.00%
Washington, D.C	TCI	$0.53	$0.53	$0.53	0.00%	0.00%
Weighted Average:		**$0.51**	**$0.50**	**$0.50**	**-1.96%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC

COST OF SERVICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	TCI	$0.32	$0.36	$0.36	12.50%	0.00%
Jacksonville	Continental Cabl	$0.53	$0.49	$0.49	-7.55%	0.00%
Los Angeles (J)	Continental	$0.43	$0.38	$0.38	-11.63%	0.00%
New Orleans	Cox Cable	$0.44	$0.47	$0.47	6.82%	0.00%
Philadelphia	Wade Comm	$0.34	$0.33	$0.33	-2.94%	0.00%
Washington, D.C	TCI	$0.43	$0.43	$0.43	0.00%	0.00%
Weighted Average:		**$0.42**	**$0.42**	**$0.42**	**0.00%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

CABLE PROGRAMMING SERVICE

COST OF SERVICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	TCI	$0.45	$0.43	$0.43	-4.44%	0.00%
Jacksonville	Continental Cabl	$0.23	$0.59	$0.59	156.52%	0.00%
Los Angeles (J)	Continental	$0.46	$0.53	$0.53	15.22%	0.00%
New Orleans	Cox Cable	$1.11	$0.47	$0.47	-57.66%	0.00%
Philadelphia	Wade Comm	$0.47	$0.33	$0.33	-29.79%	0.00%
Washington, D.C	TCI	$0.47	$0.47	$0.47	0.00%	0.00%
Weighted Average:		**$0.48**	**$0.49**	**$0.49**	**2.08%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

COST OF SERVICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	TCI	$0.38	$0.40	$0.40	5.26%	0.00%
Jacksonville	Continental Cabl	$0.37	$0.56	$0.56	51.35%	0.00%
Los Angeles (J)	Continental	$0.45	$0.46	$0.46	2.22%	0.00%
New Orleans	Cox Cable	$0.72	$0.47	$0.47	-34.72%	0.00%
Philadelphia	Wade Comm	$0.41	$0.33	$0.33	-19.51%	0.00%
Washington, D.C	TCI	$0.45	$0.45	$0.45	0.00%	0.00%
Weighted Average:		**$0.44**	**$0.46**	**$0.46**	**4.55%**	**0.00%**

UNREGULATED SYSTEMS

MONTHLY RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

UNREGULATED

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	Prime Cable	$23.52	$21.95	$21.95	-6.68%	0.00%
Dallas	TCI	$25.61	$25.61	$25.61	0.00%	0.00%
Detroit	Barden Comm	$20.85	$24.53	$24.53	17.65%	0.00%
Houston	TCI	$28.90	$28.19	$28.19	-2.46%	0.00%
Los Angeles (I)	Continental	$24.10	$23.98	$23.98	-0.50%	0.00%
Los Angeles (K)	Continental	$26.90	$22.91	$22.91	-14.83%	0.00%
Phoenix	Insight Cablevisi	$25.70	$24.32	$24.32	-5.37%	0.00%
Phoenix	Dimension Cable	$22.38	$22.38	$22.38	0.00%	0.00%
Seattle	Summit Comm	$26.90	$28.03	$28.03	4.20%	0.00%
Staten Island	Americable	$28.95	$28.95	$28.95	0.00%	0.00%
Washington, D.C	Chesapeake Cabl	$21.95	$21.95	$21.95	0.00%	0.00%
Weighted Average:		**$24.08**	**$23.95**	**$23.95**	**-0.54%**	**0.00%**

MONTHLY RATE CHANGES

BASIC

COST OF SERVICE

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	TCI	$10.00	$11.29	$11.29	12.90%	0.00%
Jacksonville	Continental Cabl	$8.50	$7.89	$7.89	-7.18%	0.00%
Los Angeles (J)	Continental	$9.95	$8.40	$8.40	-15.58%	0.00%
New Orleans	Cox Cable	$10.95	$11.27	$11.27	2.92%	0.00%
Philadelphia	Wade Comm	$9.95	$11.41	$11.41	14.67%	0.00%
Washington, D.C	TCI	$10.00	$10.00	$10.00	0.00%	0.00%
Weighted Average:		**$9.69**	**$9.90**	**$9.90**	**2.17%**	**0.00%**

MONTHLY RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

UNREGULATED

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	Prime Cable	$20.57	$18.45	$18.45	-10.31%	0.00%
Dallas	TCI	$21.66	$21.66	$21.66	0.00%	0.00%
Detroit	Barden Comm	$19.85	$22.03	$22.03	10.98%	0.00%
Houston	TCI	$24.05	$23.34	$23.34	-2.95%	0.00%
Los Angeles (I)	Continental	$23.35	$20.53	$20.53	-12.08%	0.00%
Los Angeles (K)	Continental	$23.00	$19.35	$19.35	-15.87%	0.00%
Phoenix	Insight Cablevisi	$22.20	$22.57	$22.57	1.67%	0.00%
Phoenix	Dimension Cable	$20.42	$20.42	$20.42	0.00%	0.00%
Seattle	Summit Comm	$22.95	$24.08	$24.08	4.92%	0.00%
Staten Island	Americable	$26.95	$26.95	$26.95	0.00%	0.00%
Washington, D.C	Chesapeake Cabl	$21.95	$21.95	$21.95	0.00%	0.00%
Weighted Average:		**$21.42**	**$20.80**	**$20.80**	**-2.89%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC, CABLE PROGRAMMING SERVICE and EQUIPMENT

UNREGULATED

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	Prime Cable	$0.47	$0.43	$0.43	-8.51%	0.00%
Dallas	TCI	$0.33	$0.33	$0.33	0.00%	0.00%
Detroit	Barden Comm	$0.36	$0.42	$0.42	16.67%	0.00%
Houston	TCI	$0.74	$0.72	$0.72	-2.70%	0.00%
Los Angeles (I)	Continental	$0.50	$0.50	$0.50	0.00%	0.00%
Los Angeles (K)	Continental	$0.56	$0.49	$0.49	-12.50%	0.00%
Phoenix	Insight Cablevisi	$0.69	$0.66	$0.66	-4.35%	0.00%
Phoenix	Dimension Cable	$0.68	$0.68	$0.68	0.00%	0.00%
Seattle	Summit Comm	$0.66	$0.68	$0.68	3.03%	0.00%
Staten Island	Americable	$0.72	$0.72	$0.72	0.00%	0.00%
Washington, D.C	Chesapeake Cabl	$0.65	$0.65	$0.65	0.00%	0.00%
Weighted Average:		**$0.51**	**$0.51**	**$0.51**	**0.00%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC

UNREGULATED

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	Prime Cable	$0.39	$0.35	$0.35	-10.26%	0.00%
Dallas	TCI	$0.27	$0.27	$0.27	0.00%	0.00%
Detroit	Barden Comm	$0.34	$0.37	$0.37	8.82%	0.00%
Houston	TCI	$0.63	$0.61	$0.61	-3.17%	0.00%
Los Angeles (I)	Continental	$0.41	$0.37	$0.37	-9.76%	0.00%
Los Angeles (K)	Continental	$0.41	$0.35	$0.35	-14.63%	0.00%
Phoenix	Insight Cablevisi	$0.26	$0.61	$0.61	134.62%	0.00%
Phoenix	Dimension Cable	$0.62	$0.62	$0.62	0.00%	0.00%
Seattle	Summit Comm	$0.56	$0.59	$0.59	5.36%	0.00%
Staten Island	Americable	$0.67	$0.67	$0.67	0.00%	0.00%
Washington, D.C	Chesapeake Cabl	$0.75	$0.75	$0.75	0.00%	0.00%
Weighted Average:		**$0.44**	**$0.43**	**$0.43**	**-2.27%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

CABLE PROGRAMMING SERVICE

UNREGULATED

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	Prime Cable	$0.43	$0.38	$0.38	-11.63%	0.00%
Dallas	TCI	$0.28	$0.28	$0.28	0.00%	0.00%
Detroit	Barden Comm					
Houston	TCI	$0.61	$0.59	$0.59	-3.28%	0.00%
Los Angeles (I)	Continental	$0.56	$0.48	$0.48	-14.29%	0.00%
Los Angeles (K)	Continental	$0.55	$0.47	$0.47	-14.55%	0.00%
Phoenix	Insight Cablevisi	$0.83	$0.61	$0.61	-26.51%	0.00%
Phoenix	Dimension Cable	$0.62	$0.62	$0.62	0.00%	0.00%
Seattle	Summit Comm					
Staten Island	Americable					
Washington, D.C	Chesapeake Cabl	$0.59	$0.59	$0.59		
Weighted Average:		**$0.41**	**$0.39**	**$0.39**	**-4.88%**	**0.00%**

MONTHLY PER CHANNEL RATE CHANGES

BASIC and CABLE PROGRAMMING SERVICE

UNREGULATED

City	System Name	8/31/93	5/14/94	7/14/94	% Change Aug-Jul	% Change May-Jul
Chicago	Prime Cable	$0.41	$0.36	$0.36	-12.20%	0.00%
Dallas	TCI	$0.28	$0.28	$0.28	0.00%	0.00%
Detroit	Barden Comm	$0.34	$0.37	$0.37	8.82%	0.00%
Houston	TCI	$0.62	$0.60	$0.60	-3.23%	0.00%
Los Angeles (I)	Continental	$0.49	$0.43	$0.43	-12.24%	0.00%
Los Angeles (K)	Continental	$0.48	$0.41	$0.41	-14.58%	0.00%
Phoenix	Insight Cablevisi	$0.60	$0.61	$0.61	1.67%	0.00%
Phoenix	Dimension Cable	$0.62	$0.62	$0.62	0.00%	0.00%
Seattle	Summit Comm	$0.56	$0.59	$0.59	5.36%	0.00%
Staten Island	Americable	$0.67	$0.67	$0.67	0.00%	0.00%
Washington, D.C	Chesapeake Cabl	$0.65	$0.65	$0.65	0.00%	0.00%
Weighted Average:		**$0.46**	**$0.44**	**$0.44**	**-4.35%**	**0.00%**

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NEWS

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

DA 94-788

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC 515 F 2d 385 (D.C. Circ. 1974)

Released: July 14, 1994

ERRATUM TO FCC CABLE SERVICES BUREAU SURVEY

Due to an error in a written submission made by one of the cable operators that was included in the price survey of cable systems in the 25 largest U.S. cities that was prepared by the Cable Services Bureau of the FCC, which was released earlier today, the report on the survey contained information that understated the decline in rates experienced by subscribers. Based on the earlier information, the Bureau earlier reported that the rates for the "typical" subscribers served by all systems in the sample decreased by an average of 5.68% between August 1993 and July 14, 1994. The actual decrease is 7.27%. In addition, the Bureau earlier reported that the rates for "typical" subscribers served by all regulated systems in the sample decreased by an average of 6.63%. However, the actual decrease is 8.49%. Finally, the Bureau earlier reported that the rates for typical subscribers served by cost-of-service systems increased by 3.83% between August 1993 and July 14, 1994. The rates actually decreased by 7.30%.

News Media Contact: Susan Lewis Sallet (202) 418-0500
Cable Services Bureau Contact: Elizabeth Beaty (202) 416-0856

-FCC-

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FCC 94-178

In the Matter of	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act -	)	
Competitive Bidding	)	

FIFTH REPORT AND ORDER

Adopted: June 29, 1994 Released: July 15, 1994

By the Commission: Commissioners Quello, Barrett, Ness and Chong issuing separate statements.

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APPENDIX A - LIST OF COMMENTERS AND REPLY COMMENTERS

APPENDIX B - FINAL RULES

I. INTRODUCTION

1. In this Fifth Report and Order, we adopt rules to conduct auctions for the award of more than 2,000 licenses to provide personal communications services in the 2 GHz band, which we call "broadband PCS." These broadband PCS auctions will constitute the largest auction of public assets in American history and are expected to recover billions of dollars for the United States Treasury. More importantly, the auctions will lead to the introduction of an array of new telecommunications products and services that are expected to fuel our nation's economic growth and revolutionize the way in which Americans communicate.

2. We also adopt in this Order provisions to fulfill Congress's mandate that we ensure that small businesses, rural telephone companies and businesses owned by minorities and women are given the opportunity to participate in the provision of broadband PCS. These rules will provide unprecedented opportunities for these designated entities to become meaningfully involved in the provision of a new telecommunications service. This action seeks to ensure that licenses for broadband PCS are disseminated to a wide variety of applicants and to remedy the serious underrepresentation of minorities and women in the provision of telecommunications services. Further, by the actions we take today we seek to ensure that PCS is provided to all communities in this country, including rural areas.

3. Broadband PCS will provide a variety of mobile services that will compete with existing cellular services. In addition, broadband PCS is expected to provide new mobile communications capabilities that are not currently available. These services will be provided by means of a new generation of communications devices that will include small, lightweight, multi-function portable phones, portable facsimile and other imaging devices, new types of multi-channel cordless phones, and advanced paging devices with two-way data capabilities.[1] The introduction of broadband PCS should benefit consumers by raising the overall level of competition in many already competitive segments of the telecommunications industry and by providing competition in other segments for the first time. The broadband PCS industry should also generate thousands of jobs in this country and improve the international competitiveness of the American economy.

4. Auctions for broadband PCS licenses will be conducted pursuant to Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which was enacted in August 1993. Section

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[1] We already have adopted rules for competitive bidding on licenses to be awarded to provide personal communications services in the 900 MHz band (narrowband PCS), which will be used primarily to provide advanced paging services, and for licenses to provide Interactive Video and Data Service (IVDS), which will be used to provide services such as home shopping and pay-per-view programming. See Third Report and Order in PP Docket No. 93-253, FCC 94-98, 9 FCC Rcd ____, released May 10, 1994 (narrowband PCS); and Fourth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2330, released May 10, 1994 (IVDS).

309(j) granted the Commission express authority to employ competitive bidding procedures to award licenses to use the electromagnetic spectrum.[2] Section 309(j)(1) permits auctions only where mutually exclusive applications for initial licenses are accepted for filing by the Commission and where the principal use of the spectrum is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. In the Second Report and Order in this proceeding, we concluded that PCS as a class of service satisfies the Section 309(j)(1) criteria. See Second Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2348 (released April 20, 1994) (Second Report and Order), at ¶¶ 54-58. Accordingly, if mutually exclusive applications for a broadband PCS license are accepted for filing, we will award that license through competitive bidding.

5. We also concluded in the Second Report and Order that we could design auction procedures to govern the award of broadband PCS licenses that would promote the objectives listed in Section 309(j)(3). More specifically, in the Second Report and Order, we determined that the use of competitive bidding to award broadband PCS licenses, as compared with other licensing methods, would speed the development and deployment of new services to the public and would encourage efficient use of the spectrum, as required by Section 309(j)(3)(A) and (D). In this regard, we noted that auctions would generally award licenses quickly to those parties who value them most highly and who are therefore most likely to introduce service rapidly to the public. Id. at ¶ 57. We also concluded that competitive bidding would recover for the public a portion of the value of the spectrum, as envisioned in Section 309(j)(3)(C). Id. We considered a variety of methods to implement Congress's remaining objectives, set forth in Section 309(j)(3)(B), of "promoting economic opportunity" and "avoiding excessive concentration of licenses" by disseminating licenses "among a wide variety of applicants." In the Second Report and Order, we adopted rules which provide the Commission with a menu of options to choose from to promote these objectives with respect to particular spectrum services to be auctioned, such as broadband PCS, in service-specific rules.

6. In our Broadband PCS Reconsideration Order, we established bandwidth assignments and area designations for broadband PCS. See Memorandum Opinion and Order in GEN Docket No. 90-314, FCC 94-144, released June 13, 1994 ("Broadband PCS Reconsideration Order"); see also Second Report and Order in GEN Docket No. 90-314, FCC 93-451, 8 FCC Rcd 7700 (1993). In that Order, we allocated 120 MHz of spectrum for licensed broadband PCS. We divided the licensed broadband PCS spectrum into three

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[2] We adopted a Notice of Proposed Rule Making to implement Section 309(j) on September 23, 1993. Notice of Proposed Rule Making in PP Docket No. 93-253, 8 FCC Rcd 7635 (1993) (hereinafter "NPRM" or "Notice"). The Commission received 222 comments, 169 reply comments and numerous ex parte presentations relating to this proceeding. A list of commenters and reply commenters is attached as Appendix A to this Fifth Report and Order. Commenters may be referred to herein by the abbreviations noted in Appendix A.

30 MHz blocks (blocks A, B and C) and three 10 MHz blocks (blocks D, E and F). We also designated two different service areas: 493 Basic Trading Areas ("BTAs") and 51 Major Trading Areas ("MTAs").[3] The licenses in frequency blocks A and B will be awarded on an MTA basis, and the licenses on frequency blocks C, D, E and F will be awarded on a BTA basis. A total of 2,074 broadband PCS licenses will therefore be issued.[4] The Broadband PCS Reconsideration Order sets forth eligibility rules for obtaining broadband PCS licenses, and establishes construction requirements to facilitate the provision of PCS services. See Broadband PCS Reconsideration Order at ¶¶ 102-132, 147-158. By these rules, we intend to promote competition in the wireless telecommunications market by as many different qualified providers as the spectrum can reasonably accommodate and to promote the rapid deployment of the infrastructure required to provide broadband PCS.

II. EXECUTIVE SUMMARY

7. In this Fifth Report and Order, we set forth the specific auction procedures for broadband PCS licenses. We have decided to conduct three auctions: the first for the 99 available PCS licenses in MTA blocks A and B, the second for the 986 PCS licenses in BTA blocks C and F, and the third for the remaining 986 PCS licenses in BTA blocks D and E. That is, the first auction will award licenses for the 30 MHz blocks for large geographic areas. The second auction will award licenses for smaller geographic areas for the two blocks that, as explained below, we have reserved for bidding by relatively small companies. In these "entrepreneurs' blocks," we have designed procedures to ensure that small businesses, rural telephone companies and businesses owned by women and minorities, which we collectively refer to as designated entities, have "the opportunity to participate in the provision" of PCS, as Congress directed in Section 309(j)(4)(D). In the third auction we will award licenses for the remaining 10 MHz blocks.

8. We intend to conduct each auction through simultaneous multiple round bidding with simultaneous stopping rules. Under that approach, no license is awarded until the bidding closes on all licenses in the auction. We have determined that simultaneous multiple round bidding is appropriate where the value of the licenses is high compared to the cost of

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[3] The 493 BTAs and 51 MTAs used in our broadband PCS licensing rules have been adapted from the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, at 38-39.

[4] The Commission has granted pioneer's preferences to three broadband PCS applicants, and stated that the parties awarded pioneer's preferences may apply for a 30 MHz MTA broadband PCS license without facing competing applications. See Third Report and Order in GEN Docket No. 90-314, 9 FCC Rcd 1337 (1994). If the Commission grants licenses to the three pioneer's preference grantees, three fewer licenses will be awarded through competitive bidding.

conducting the auction and the values of licenses are interdependent. See Second Report and Order at ¶ 106-111. We believe the former condition is met here because other government agencies project that the broadband PCS licenses will be auctioned for as much as $10.6 billion. See id. at ¶ 177. The latter condition is also satisfied because the record demonstrates, for example, that a license for the Philadelphia MTA or the Richmond MTA will likely be valued more highly if it is held in conjunction with the license for the Washington-Baltimore MTA. We are adopting a variety of rules governing bid increments and bidding activity to move the auctions toward completion in a reasonable period of time. We are also retaining the ability to use other approaches, including sequential auctions for the licenses, and to make other adjustments to the auction process as necessary.

9. As mentioned above, we establish by this Order a number of rules to implement Congress's mandate in Section 309(j)(4)(D) that we ensure that designated entities are "given the opportunity to participate in the provision of spectrum-based services" such as broadband PCS. To accomplish this objective, Congress directed us to "consider the use of tax certificates, bidding preferences, and other procedures." 47 U.S.C. § 309(j)(4)(D). We construe this congressional directive as a mandate that we take the steps that are necessary to ensure that designated entities have a realistic opportunity to obtain broadband PCS licenses. We apply that mandate in light of Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 564-565 (1990), which held that "benign race-conscious measures mandated by Congress . . . are constitutionally permissible to the extent that they serve important governmental objectives within the power of Congress and are substantially related to achievement of those objectives." The rules we adopt also further Congress's objectives, set forth in Section 309(j)(3)(B), of "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women." Each of the steps adopted here is directly related to carrying out Congress's stated objective of promoting economic opportunity by disseminating broadband PCS licenses to a wide variety of applicants, including designated entities.

10. The record clearly demonstrates that the primary impediment to participation by designated entities is lack of access to capital. This impediment arises for small businesses from the higher costs they face in raising capital and for businesses owned by minorities and women from lending discrimination as well. In this regard, it should be noted that although auctions have many beneficial aspects, they threaten to erect another barrier to participation by small businesses and businesses owned by minorities and women by raising the cost of entry into spectrum-based services.

11. Congress has recognized that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased

difficulties in obtaining credit."[5] Congress further found that women and minorities face particularly severe problems in raising capital.[6] A study of mortgage lending conducted by the Federal Reserve Bank of Boston in 1992 illustrates how those problems arise. That study showed that in cases in which lenders exercised discretion in deciding whether to make a loan to a borrower who presented some problems (which includes most mortgage applicants), that discretion tended to be exercised in favor of whites. As a result, a minority applicant for a mortgage who was identical in all pertinent respects to a white applicant nevertheless was 60 percent more likely to be denied a mortgage loan.[7] At the same time, discrimination was difficult to show in any particular case, although it emerged clearly when data concerning hundreds of mortgage applications were reviewed.

12. The first measure we adopt to fulfill Congress's mandate that we ensure that designated entities have the opportunity to participate in providing broadband PCS is to reserve the 30 MHz licenses on block C and the 10 MHz licenses on block F, both of which are to be licensed in each of the 493 BTAs, for bidding by entities with annual gross revenues of less than $125 million and total assets of less than $500 million. These limits will exclude many large telecommunications companies from bidding on these two blocks. We will not allow one entity to obtain more than 10 percent (i.e., 98) of the licenses on these two blocks. By excluding large companies from bidding in these two blocks and by limiting the total number of licenses that one entity can obtain in these blocks we create numerous opportunities for smaller entities to become PCS providers and thereby ensure that broadband PCS licenses will be disseminated "among a wide variety of applicants," as required by Section 309(j)(3)(B).

13. Reserving blocks C and F for bidding by relatively small companies will not, by itself, be sufficient to ensure that small businesses and businesses owned by members of minority groups and women have the opportunity to obtain broadband PCS licenses. Under the definition we apply for purposes of this Order, "small businesses" are those with gross revenues not exceeding $40 million, and those businesses will be at a disadvantage in competing against companies with gross revenues of as much as $125 million. In addition, businesses owned by members of minority groups and women face discrimination that poses additional obstacles for these firms. Accordingly, we take five related steps within the entrepreneurs' blocks to assist designated entities in attracting the capital necessary to obtain a broadband PCS license.

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[5] Small Business Credit and Business Opportunity Enhancement Act of 1992, Section 331(a)(3), Pub. L. 102-366, Sept. 4, 1992.

[6] Id. Sections 112(4) and 331(a)(4).

[7] Mortgage Lending in Boston: Interpreting HMDA Data, Federal Reserve Bank of Boston, Working Paper 92-7 (October 1992).

14. First, we will structure our attribution rules to allow those extremely large companies that may not bid on blocks C and F to invest in entities that bid on those blocks. More specifically, we will allow the relatively small companies eligible to bid in these blocks to obtain investment representing up to 75 percent of their passive equity from larger companies so long as each investor holds no more than a 25 percent passive equity interest. In addition, eligible businesses owned by minorities and women may choose to have a single investor, no matter how large, hold a passive equity interest up to 49.9 percent. These rules, and others that we establish in this Order, are designed to enhance access to capital by businesses owned by minorities and women.

15. Second, to encourage large companies to invest in designated entities and to assist designated entities without large investors to overcome the additional hurdle presented by auctions, we will make bidding credits available to designated entities. More specifically, small businesses will receive a 10 percent bidding credit (or a 10 percent discount on their winning bids). Businesses owned by minorities and women will receive a 15 percent bidding credit to compensate for the substantial problems they face in attracting capital. The credits will be cumulative, so that a business owned by minorities or women that also qualifies as a small business will receive a 25 percent bidding credit. Under these rules, it still will be more expensive for designated entities to participate in the provision of spectrum-based services than it was before Congress granted us authority to hold auctions, because they will have to purchase licenses. But by adopting bidding credits, which are explicitly authorized by Section 309(j)(4)(D), the Commission seeks to promote economic opportunity and to counterbalance the tendency of auctions to concentrate license ownership in the hands of several very large companies.

16. Third, we will allow most successful bidders within the entrepreneurs' blocks to pay for their licenses in installments for generally the same reasons -- encouraging large companies to invest in designated entities, promoting economic opportunity by assisting designated entities in overcoming the additional hurdle presented by auctions, and ensuring that licenses are disseminated widely. In general, successful bidders will be permitted to defer payments of principal on their debt to the government for some period. Small businesses and businesses owned by minorities and women will be permitted to defer payments of principal for a longer period than other successful bidders in these blocks. Finally, businesses owned by minorities and women will be charged a lower interest rate.

17. Fourth, we will extend our tax certificate policies to promote participation by minorities and women in the provision of broadband PCS. The holder of a tax certificate is permitted to defer payment of the capital gains tax that would otherwise be recognized upon the sale of an investment. Our extension of the tax certificate policy to broadband PCS will promote involvement by minorities and women in spectrum-based services in three ways. First, initial investors in such businesses will be eligible for tax certificates upon the sale of their investments. We expect that the availability of such favorable tax treatment will enable minority and woman-owned businesses to attract investors more easily. Second, holders of broadband PCS licenses will be able to obtain tax certificates upon the sale of the business to

a company controlled by minorities and women. Third, a cellular operator that sells its interest in an overlapping cellular system to a minority or woman-owned business to come into compliance with our PCS/cellular cross-ownership rule will be eligible for a tax certificate. Both the second and third policy will further Congress's objective of ensuring that spectrum licenses are disseminated widely and, in particular, to designated entities.

18. Finally, we will reduce the upfront payment for all bidders in the entrepreneurs' block. Bidders in the other blocks will pay $0.02 per MHz per pop while winners in the entrepreneurs' blocks will receive a 25 percent discount and pay only $0.015 per MHz per pop as a pre-auction payment.

19. Congress was also concerned that rural areas not go unserved by PCS, and therefore directed us to ensure participation in auctions for spectrum-based services by rural telephone companies who have a history of service to rural areas and an established infrastructure on which to build a PCS business effectively. Thus, we establish partitioning rules in this Order that will allow them to use their existing wireline network to efficiently and expeditiously provide PCS in rural areas. In addition, most rural telephone companies will qualify to bid on the entrepreneurs' blocks, and hence will be eligible for installment payments. Those rural telephone companies that qualify as small or minority or women-owned businesses will also be able to take advantage of the applicable bidding credits.

20. The rules that we adopt today are designed to ensure that only bona fide designated entities qualify for the special provisions established to ensure their participation in broadband PCS. The rules are designed to enable designated entities to attract passive equity from non-designated entities, provided that designated entities maintain control and a substantial equity stake in the ventures at all times. The Commission will not tolerate "fronts" that are controlled by supposedly passive investors, and we will be vigilant in preventing abuse of the designated entity provisions. Our rules are also designed to prevent designated entities from assigning licenses obtained through the use of these special measures or who otherwise lose their designated entity status before the end of a required five-year holding period.

21. The following sections of this Fifth Report and Order discuss in detail the actions we have outlined above.

III. AUCTIONABILITY OF BROADBAND PCS

22. Section 309(j)(1) of the Communications Act, as amended, 47 U.S.C. § 309(j)(1), permits auctions only where mutually exclusive applications for initial licenses or construction permits are accepted for filing by the Commission and where the principal use of the spectrum will involve or is reasonably likely to involve the receipt by the licensee of compensation from subscribers in return for enabling those subscribers to receive or transmit communications signals. In the Second Report and Order, we concluded that PCS as a class

of service would satisfy the Section 309(j)(1) criteria for auctionability. See Second Report and Order at ¶¶ 54-58. Specifically, based on the record in this proceeding and in GEN Docket No. 90-314, we concluded that the principal use of broadband PCS spectrum satisfied these auction criteria Id. at ¶ 56. Thus, if mutually exclusive applications for a broadband PCS license are accepted for filing, we will award that license through competitive bidding.[8]

23. As noted above, we concluded in the Second Report and Order that the criteria in Section 309(j)(3) will be satisfied by competitive bidding for broadband PCS licenses, and thus that broadband PCS should be subject to our competitive bidding procedures. We determined that the use of competitive bidding to award broadband PCS licenses, as compared with other licensing methods, will speed the development and deployment of new services to the public with minimal administrative or judicial delay, and will encourage efficient use of the spectrum as required by Section 309(j)(3)(A) and (D). We also concluded that competitive bidding would recover for the public a portion of the value of the spectrum, as envisioned in Section 309(j)(3)(C). Id. Finally, in accordance with Section 309(j)(3)(B), we adopted a set of open competitive bidding procedures and a menu of special provisions designed to increase opportunities for designated entities who might otherwise face entry barriers. Our views on this matter remain unchanged since adoption of the Second Report and Order. We therefore affirm in this Order the use of competitive bidding procedures to award broadband PCS licenses.

IV. COMPETITIVE BIDDING DESIGN

A. General Competitive Bidding Rules

24. The Second Report and Order established the criteria to be used in selecting which auction design method to use for each particular auctionable service. Generally, we concluded that awarding licenses to those parties who value them most highly will foster Congress's policy objectives. In this regard, we noted that since a bidder's ability to

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[8] In the Second Report and Order, we addressed the only commenter who argued that the Commission should not find that the principal use of PCS is likely to be for the provision of service to subscribers for compensation. See Second Report and Order at ¶¶ 55-56. The Commission rejected the argument of Millin Publications, a publisher of specialized information services that intends to utilize PCS frequencies on a non-subscription basis, that the Commission should refrain from making the principal use finding because PCS does not yet exist. We concluded that the overwhelming weight of the comments in this proceeding, as well as our experience with the PCS experiments that we have licensed, reflect that licensed PCS spectrum is likely to be used principally for the provision of service to subscribers for compensation. See id. at ¶ 56. We find no basis in the record to depart from this conclusion.

introduce valuable new services and to deploy them quickly, intensively, and efficiently increases the value of a license to that bidder, an auction design that awards licenses to those bidders with the highest willingness to pay tends to promote the development and rapid deployment of new services and the efficient and intensive use of the spectrum. In articulating our auction design principles we further stated that: (1) licenses with strong value interdependencies should be auctioned simultaneously; (2) multiple round auctions, by providing bidders with information regarding other bidders' valuations of licenses, generally will yield more efficient allocations of licenses and higher revenues, especially where there is substantial uncertainty as to value; and (3) because they are relatively expensive to implement and time-consuming, simultaneous and/or multiple round auctions become less cost-effective as the value of licenses decreases. See Second Report and Order at ¶ 69.

25. Based on the foregoing, we concluded that where the licenses to be auctioned are interdependent and their value is expected to be high, simultaneous multiple round auctions would best achieve the Commission's goals for competitive bidding. See Second Report and Order at ¶¶ 109-111. We indicated that compared with other bidding mechanisms, simultaneous multiple round bidding will generate the most information about license values during the course of the auction and provide bidders with the most flexibility to pursue back-up strategies. Thus, we concluded that simultaneous multiple round bidding is most likely to award interdependent licenses to the bidders who value them the most. We also indicated that this method will facilitate efficient aggregation of licenses across spectrum bands, thereby resulting in vigorous competition among several strong service providers who will be able rapidly to introduce a wide variety of services highly valued by end users. Second Report and Order at ¶ 106. In addition, we concluded that because of the superior information and flexibility it provides, this method is likely to yield greater revenues than other auction designs. Thus, we found that the use of simultaneous multiple round auctions would generally be preferred. Id.

26. However, because simultaneous multiple round bidding is likely to be more administratively complex and costly both for bidders and for the FCC than sequential or single round bidding, we indicated that we would use this auction design only where license values are interdependent and the expected value of the licenses to be auctioned is high relative to the costs of conducting a simultaneous multiple round auction. See Second Report and Order at ¶¶ 110-111.

B. Competitive Bidding Design for Broadband PCS Licenses

27. In the Second Report and Order we considered several auction methods including simultaneous multiple round bidding, sequential bidding, and combinatorial bidding. We discuss each of these below. We have chosen to adopt simultaneous multiple round auctions as our auction methodology for broadband PCS licenses. We believe that for broadband licenses this method will best meet Congress's goals in authorizing competitive bidding in Section 309(j) of the Communications Act.

1. Simultaneous Multiple Round Auctions

28. There is considerable support in the record for the use of simultaneous multiple round auctions, in which two or more licenses are put up for bid at the same time, and there are multiple bidding rounds in which bidders have the opportunity to top the high bids from the previous round. Several comments and studies in the record by academic auction experts advocate simultaneous multiple round bidding for broadband PCS. See comments of PacTel Corporation, Attachment of R. Preston McAfee; comments of Pacific Bell and Nevada Bell, Attachment of Paul R. Milgrom and Robert B. Wilson; comments of NYNEX, Attachment by Robert G. Harris and Michael L. Katz. NTIA also recommends simultaneous multiple round bidding.[9] Comments of NTIA at 14-16. Other experts recommend using some combination of sequential and simultaneous bidding. See comments of Bell Atlantic Personal Communications, Inc., Attachment by Barry Nalebuff and Jeremy Bulow; and comments of Telephone and Data Systems, Attachment by Robert J. Weber. Some commenters who originally expressed no opinion on the issue or supported other methods in their comments supported proposals for simultaneous bidding in their reply comments. See reply comments of AT&T, GTE Service Corp. and Community Service Telephone Co.

29. The analysis in the Second Report and Order also supports simultaneous multiple round bidding for broadband PCS auctions. We concluded that multiple round bidding is generally superior to single round bidding, and that when licenses are interdependent, simultaneous bidding is generally superior to sequential bidding. As we noted in the Second Report and Order, multiple-round auctions have the advantage over single-round auctions insofar as they provide more information to bidders about the value that other bidders place on licenses, increasing the likelihood that the licenses are acquired by those who value them most highly and increasing the revenue likely to be gained from the auction. Multiple-round auctions are also more likely to be perceived as open and fair. The disadvantage of multiple round auctions is that they have higher administrative costs than single round auctions. Second Report and Order at ¶¶ 82-85.

30. As noted in the Second Report and Order, simultaneous auctions are more likely than sequential auctions to award interdependent licenses efficiently because they provide more information about the value of interdependent licenses and allow the use of that information because all licenses remain available throughout the bidding process. Simultaneous auctions are also likely to raise more revenue than sequential auctions for two reasons. First, they increase the value of the licenses by facilitating efficient aggregation. Second, because they provide more information about the value of interdependent licenses they reduce the propensity of sophisticated bidders to bid cautiously in order to avoid the "winner's curse" -- the tendency for the winner to be the bidder who most overestimates the value of the item up for bid. Simultaneous auctions also eliminate the need to choose the

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[9] NTIA also supports all-or-nothing bids on groups of licenses, i.e., combinatorial bidding, in conjunction with simultaneous multiple round bidding.

order in which licenses will be auctioned. The advantage offered by simultaneous auctions depends on how much interdependence exists among licenses. Second Report and Order at ¶¶ 89-94. The disadvantages of simultaneous multiple round auctions appear to be that they may be difficult to implement and there is little experience in their use. Second Report and Order at ¶ 95.

31. We agree with commenters who support simultaneous multiple round bidding for awarding broadband PCS licenses. Estimates of total PCS revenues by the Office of Management and Budget and the Congressional Budget Office indicate that the value of broadband PCS licenses will likely be sufficiently high to warrant the use of simultaneous auctions.[10] We further believe that the values of most broadband PCS licenses will be significantly interdependent because of the desirability of aggregation across spectrum blocks and geographic regions and because there is a high degree of substitutability among licenses with the same amount of spectrum and covering the same geographic area. See Second Report and Order at ¶¶ 90-91. Compared with other bidding mechanisms, simultaneous multiple round bidding generates the most information about license values during the course of the auction and provides bidders with the most flexibility to pursue back-up strategies, and is therefore most likely to award licenses to the bidders who value them the most. Simultaneous multiple round auctions will also facilitate efficient aggregation across spectrum bands, where permitted, thereby enhancing competition among wireless products and services.

32. We recognize, however, that simultaneous multiple round bidding may involve a greater degree of complexity than other competitive bidding methods, and that it may present greater operational difficulties both for the FCC and for bidders, especially where many bidders are expected to participate. Therefore, we will use a sequence of simultaneous auctions. Licenses that are highly interdependent will be grouped together and auctioned simultaneously.

2. Sequential Auctions

33. In a pure sequential auction, whether oral or electronic, licenses are put up for bid one at a time, so that bidding ends on one item before it begins on the next item. Sequential multiple round oral or electronic auctions generate valuable information about earlier auctioned licenses, which can assist bidders in valuing later auctioned licenses. If license values are interdependent, however, sequential oral or electronic auctions are less likely than simultaneous auctions to award interdependent licenses to the parties who value them most

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[10] A study by the Congressional Budget Office estimated that an auction for PCS licenses on two 25 MHz nationwide blocks of spectrum could raise $1.3 billion to $5.7 billion in revenues. Congressional Budget Office, *Auctioning Radio Spectrum Licenses*, at 23 (March 1992). The Office of Management and Budget estimated that auctioning broadband PCS licenses would generate $12.6 billion in revenues. *Budget of the United States Government, Analytical Perspectives, Fiscal Year 1995*, at 220 (February 1994).

highly and to result in the efficient aggregation of licenses, because bidders for licenses that are auctioned early must bid with less information about the value of licenses to be auctioned later, and they will have less opportunity to pursue backup bidding strategies. For these reasons, we conclude that sequential multiple round auctions are less preferred in the award of broadband PCS licenses than simultaneous multiple round auctions. Nevertheless, if, as a result of our auction experience, we determine that the operational costs or complexities associated with simultaneous multiple round auctions outweigh their benefits, we may decide instead to employ pure sequential oral or electronic (multiple round) auctions or a sequence of single combined oral auctions in which bidding is combined for all licenses in a given band with the same bandwidth and the same geographic service area. If such a change becomes necessary, the auction method will be announced by Public Notice before each auction.

34. If we should decide in the future to use sequential oral or sequential electronic bidding for relatively homogeneous licenses, we will employ a single combined auction design. Under this approach, the Commission will combine bidding for all licenses in the same band with the same amount of spectrum and same geographic service area.[11] Licenses will be awarded market by market to the highest bidders until all the available licenses are exhausted, e.g., two relatively homogeneous licenses would be awarded to the two highest bidders. Because broadband PCS licenses may not be perfectly homogeneous (i.e., bidders may prefer one frequency over another within the same geographic region for purposes of efficient aggregation), winning bidders will be given the opportunity to choose among licenses for which bidding is combined in descending order of their bid amounts (i.e., the highest bidder will pick first).

3. Combinatorial Bidding

35. In general terms, combinatorial bidding allows bidders to bid for multiple licenses as all-or-nothing packages.[12] Combinatorial bidding can be implemented with either simultaneous or sequential auction designs. Although we recognized in the Second Report and Order that there may be significant benefits associated with combinatorial bidding,

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[11] This approach was proposed by Bell Atlantic. See comments of Bell Atlantic Personal Communications Inc., Attachment by Barry Nalebuff and Jeremy Bulow at 4-5. Single combined auctions are used by the U.S. Department of the Treasury to sell U.S. securities.

[12] In combinatorial bidding, if a bid for a group of licenses exceeds the sum of the highest bids for the individual licenses that comprise the package, then the package bid would win. In the Second Report and Order we also indicated that if we were to utilize combinatorial bidding we might institute a premium so that the combinatorial bid would win only if it exceeded the sum of the bids for individual licenses by a set amount. See Second Report and Order at ¶ 114. NTIA is the main advocate of combinatorial bidding. See comments of NTIA, and ex parte submission of NTIA in PP Docket No. 93-253, February 28, 1994.

especially in terms of efficient aggregation of licenses, we concluded that simultaneous multiple round auctions offer many of the same advantages without the same degree of administrative and operational complexity and without biasing auction outcomes in favor of combination bids. See Second Report and Order at ¶¶ 101-105. On balance, we believe that the advantages of combinatorial bidding appear unlikely to outweigh the disadvantages. While broadband PCS licenses are likely to be worth more to some bidders as a part of a package, we believe that simultaneous multiple round bidding will provide these bidders with ample opportunity to express the value of interdependent licenses. Moreover, we conclude that there will not be any extreme discontinuity in value if some licenses in a package are not obtained. We believe that the opportunity to acquire licenses in post-auction transactions and the ability to withdraw bids (upon payment of the bid withdrawal penalty) will limit the risks associated with failing to acquire all of the licenses in a desired package. Nevertheless, if, based on our experience with the initial simultaneous multiple round auctions and auction experiments, we determine that such auctions do not result in efficient aggregation of licenses, and if there are significant advances in the development of combinatorial auctions, we may, by public notice prior to a specific auction, choose to use combinatorial bidding techniques in conjunction with simultaneous multiple round auctions.

C. Bidding Procedures

1. Grouping of Licenses

36. In the Second Report and Order, the Commission concluded that highly interdependent licenses should be grouped together and put up for bid at the same time in a multiple round auction. See Second Report and Order at ¶¶ 106-107. This will facilitate awarding licenses to the bidders who value them most highly because it will provide bidders information about the prices of complementary and substitutable licenses while such licenses are still up for bid. The magnitude of the benefit of auctioning a group of licenses together in a simultaneous multiple round auction increases with the degree of interdependence among the licenses. On the other hand, the Second Report and Order also noted that the cost and complexity, both for the FCC and for bidders, of auctioning a very large number of interdependent licenses simultaneously may outweigh the informational and bidding flexibility advantages. See Second Report and Order at ¶ 107. Accordingly, although we believe that all broadband PCS licenses are interdependent, we will not auction them all simultaneously. Instead, we will divide the licenses into three groups by combining those licenses that are most closely related so that there will be limited interdependence across groups. Then we will sequentially conduct a separate simultaneous multiple round auction for each group. We formed the three groups in two conceptual steps. First, we separated the "entrepreneurs'" blocks (C and F) from all other blocks.[13] Then, we separated the large unrestricted blocks (A and B, with 30 MHz of spectrum and MTA geographic scope) from the small ones (D and E,

[13] As explained in more detail below, we establish economic eligibility criteria for bidders in blocks C and F.

with 10 MHz of spectrum and BTA geographic scope).

37. In the first auction, the 99 available MTA licenses in blocks A and B will be put up for bid. In the second auction, the 986 BTA licenses in blocks C and F will be put up for bid. And in the last auction, the 986 BTA licenses in blocks D and E will be put up for bid. As explained below, we believe that this grouping strikes a proper balance among the competing concerns of awarding licenses to the parties who value them most highly, keeping the auction process simple and manageable, minimizing administrative delay, and fostering designated entity participation.

38. Separating the entrepreneurs' blocks (C and F) from all other blocks entails little loss of efficiency because most firms are likely to be interested in licenses in either the entrepreneurs' blocks or the non-restricted blocks, but not both. Large firms cannot bid on entrepreneurs' licenses, although they may partner with firms that can. Small firms can bid on all blocks, but are likely to be most interested in the entrepreneurs' blocks because on these blocks they would not be placed in the position of bidding against large firms.

39. In addition to reducing the complexity of the auctions, auctioning block C licenses after the block A and B licenses is likely to further another objective of auction design -- fostering designated entity participation -- by enabling designated entities to more easily attract partners. Many potential partners may be unwilling to commit themselves to a partnership arrangement with designated entities prior to the auction of licenses on the A and B blocks. So, designated entities that are unable to raise independent financing for at least the required upfront and down payments may have difficulty participating in an auction in which block C is put up for bid simultaneously with blocks A and B. If, however, block C is auctioned after blocks A and B, we expect that non-designated entities who are unsuccessful in acquiring MTA licenses on blocks A and B will want to become partners with or make investments in designated entities so as to gain an interest in 30 MHz licenses on block C. In addition, the auction on blocks A and B will produce price information that would be valuable to designated entities in their business planning.

40. The efficiency loss associated with separating the large unrestricted blocks (A and B) from the small ones (D and E) depends on the degree of substitutability and complementarity between licenses in these two groups. Auctioning licenses on the D and E blocks separately from those on the A and B blocks may make it more difficult for bidders to pursue a back-up strategy of combining two 10 MHz licenses in the same geographic areas as an alternative to acquiring 30 MHz licenses in the A or B blocks. We believe, however, that this is not likely to be a widely used strategy, because the licenses are defined on a BTA basis while the licenses on the A and B blocks are defined on a MTA basis. It is also possible that some bidders may wish to combine a 10 MHz license with a 30 MHz license in the same geographic area. Although this approach would be easier to pursue if blocks A, B, D and E were auctioned together, we believe that in most cases the amount bidders would be willing to pay for a block A or B license would not be strongly affected by whether they were able to acquire a complementary block D or E license. So auctioning blocks D and E

after blocks A and B would not significantly hinder combining 30 MHz and 10 MHz licenses. We conclude that the benefits of administrative simplicity from auctioning licenses on blocks A and B separately from those on blocks D and E are likely to outweigh the possible loss of efficiency.

2. Bid Increments

41. In using simultaneous multiple round auctions to award broadband PCS licenses, it is important to specify minimum bid increments.[14] The bid increment is the amount or percentage by which the bid must be raised above the previous round's high bid in order to be accepted as a valid bid in the current bidding round. The application of a minimum bid increment speeds the progress of the auction and, along with activity and stopping rules, helps to ensure that the auction comes to closure within a reasonable period of time. Establishing an appropriate minimum bid increment is especially important in a simultaneous auction with a simultaneous closing rule. In that case, all markets remain open until there is no bidding on any license, and a delay in closing one market will delay the closing of all markets.

42. Because we plan to use simultaneous multiple round auctions to award broadband PCS licenses, we believe that it is necessary to impose a minimum bid increment to ensure that the broadband PCS auctions conclude within a reasonable period of time. Commenters addressing the issue generally supported a minimum bid increment of 5 percent. PacTel, for example, argues that this amount will provide a reasonable compromise between the goal of completing the auction quickly and that of revealing information about the distribution of valuations among bidders.[15] As we recognized in the Second Report and Order, it is important in establishing the amount of the minimum bid increment to express such increment as the greater of a percentage and fixed dollar amount. See Second Report and Order at ¶ 126. This will ensure a timely completion of the auction even if bidding begins at a very low dollar amount. Accordingly, we will impose a minimum bid increment of some percentage of

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[14] See Second Report and Order at ¶¶ 124-126. Commenters who addressed the issue supported minimum bid increments. See comments of Telephone and Data Systems, Inc. at 24; comments of PacTel Corporation, Attachment of R. Preston McAfee at 16, 18; comments of Pacific Bell and Nevada Bell, Attachment of Paul R. Milgrom and Robert B. Wilson at 19; reply comments of Telephone and Data Systems, Inc., Attachment of Robert J. Weber at 11; reply comments of PacTel Corporation, Attachment of R. Preston McAfee at 10; reply comments of Pacific Bell and Nevada Bell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 8, 9.

[15] See comments of PacTel, Exhibit by R. Preston McAfee, *Auction Design for Personal Communications Services* at 16. Milgrom and Wilson also recommend a minimum bid increment of 5 percent (subject to a dollar minimum and maximum) for stage I of the auction, and smaller percentages for stages II and III. Reply comments of PacBell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 8, 9.

the high bid from the previous round or a dollar amount per MHz per pop, whichever is greater, in broadband PCS auctions where multiple round bidding is used.[16]

43. PacTel also suggests, in the context of simultaneous auctions, that the Commission should vary the bid increment, reducing it as the number of active bidders declines.[17] Similarly, PacBell suggests that the bid increment depend on the stage of the auction, with a 5 percent increment in stage I, 2 percent in stage II, and 1 percent in stage III.[18] This would move the auction quickly at the beginning, when prices have limited informational content and there is little benefit to either bidders or the Commission of refined price movements, while allowing bidders to express small differences in valuations as the auction nears a close, increasing both efficiency and auction revenues. Small bid increments also reduce the chances of ties. Where a tie does occur, the high bidder will be determined by the order in which the bids were received by the Commission.[19]

44. Accordingly, we will start the auction with large bid increments, and reduce the increments as bidding activity falls. The minimum bid increment in stage I of the auction will be 5 percent of the high bid in the previous round or $.02 per MHz per pop, whichever is greater.[20] We will reduce the minimum bid increment as we move through the auction stages, with a minimum bid increment of the greater of 2 percent or $.01 per MHz per pop in

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[16] "Pop" refers to each member of the population of the license service area and "MHz" refers to the amount of spectrum, in megahertz, that the licensee is permitted to use. For example, for a 30 MHz license with a population of 10 million, if the minimum bid increment were the greater of 5 percent or $0.02 per MHz per pop, the minimum bid increment would be $6 million ($0.02 x 30 MHz x 10,000,000) when the high bid from the previous round is less than $120 million. If the high bid from the previous round exceeds $120 million, the minimum bid would be 5 percent of the value of that bid (since 5 percent of a bid over $120 million is greater than $6 million).

[17] See comments of PacTel, Exhibit by R. Preston McAfee, *Auction Design for Personal Communications Services*, at 18.

[18] See reply comments of PacBell, Appendix to Exhibit by Paul Milgrom and Robert Wilson, *Auction Rules and Procedures*, at 8-9. For a discussion of auction stages in simultaneous multiple round auctions see the section on activity rules infra.

[19] See Second Report and Order at ¶ 125.

[20] $0.02 per MHz per pop would represent almost 6 percent of the value of a license based on an extrapolation from the $10.6 billion estimated value of the 120 MHz of broadband PCS spectrum to be licensed. See Second Report and Order at ¶ 177.

stage II, and the greater of 1 percent or $.005 per MHz per pop in stage III.[21] The Commission, however, retains the discretion in broadband PCS auctions to set and, by announcement before or during the auction, vary the minimum bid increments for individual licenses or groups of licenses over the course of an auction if the auction is not moving at an appropriate pace.

45. In addition, the Commission will establish a suggested minimum bid on each license. Bids below the suggested minimum bid will count as activity under the activity rule (see infra) only if no bids at or above the suggested minimum bid are received. Initial bids must be above the minimum bid increment of $.02 per MHz per pop, but may be below the suggested minimum bid. Once a bid has been received on a license, the suggested minimum bid is no longer applicable in subsequent rounds. The amount of the suggested minimum bid may vary by market size, with a larger minimum bid in larger markets, and will be announced by public notice prior to each auction. We will establish suggested minimum bids at no less than $.05 per MHz per pop and no more than $.20 per MHz per pop. The suggested minimum bid provides bidders an incentive to start bidding at a substantial fraction of the final prices of licenses, thus ensuring a rapid conclusion of the auction, while still allowing for bidding on licenses whose market values are below the suggested minimum bids.[22]

3. Stopping Rules for Multiple Round Auctions

46. We also noted in the Second Report and Order that with multiple round auctions a stopping rule must be established for determining when the auction is over.[23] In

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[21] In oral or electronic sequential auctions the auctioneer may within his or her sole discretion establish and vary the amount of the minimum bid increment in each round of bidding.

[22] If the Commission were to preclude bidding below a starting minimum bid, a bidder who is interested in only a single license for which the minimum bid is set above the market value would be forced to use an activity rule waiver or drop out of the auction under the activity rules adopted infra.

[23] See Second Report and Order at ¶ 127. Commenters agreed on the importance of the appropriate stopping rule. PacTel proposes that bidding on an individual license close if there are no new bids on that license within a given round, or if there are fewer than two bids greater than a "suggested minimum bid." Comments of PacTel, Attachment of R. Preston McAfee at 16-18. Pacific Bell recommends simultaneous closing of bidding on all licenses when there are no new acceptable bids on any license. Comments of PacBell, Attachment of Paul Milgrom and Robert Wilson at 19; reply comments of PacBell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 5. Bell Atlantic Personal Communications, on the other hand, asserts that in simultaneous auctions, no stopping rule can prevent strategic delays. They provide no evidence for this, however, and do not discuss any closing rule in

simultaneous multiple round auctions, bidding may close separately on individual licenses, simultaneously on all licenses, or a hybrid approach may be used. Under an individual, license-by-license approach, bidding closes on each license after one round passes in which no new acceptable bids are submitted for that particular license. With a simultaneous stopping rule, bidding remains open on all licenses until there is no new acceptable bid on any license. This approach has the advantage of providing bidders full flexibility to bid for any license as more information becomes available during the course of the auction, but it may lead to very long auctions, unless an activity rule (see discussion infra) is imposed. A hybrid approach combines the first two stopping rules. For example, we may use a simultaneous stopping rule (along with an activity rule designed to expedite closure for licenses subject to the simultaneous stopping rule) for the higher value licenses. For lower value licenses, where the loss from eliminating some back-up strategies is less, we may use simpler license-by-license closings. In the Second Report and Order we recognized that such a hybrid approach might simplify and speed up the auction process without significantly sacrificing efficiency or expected revenue. Id.

47. For broadband PCS we believe that a simultaneous stopping rule is preferable for all MTA licenses. MTA licenses are expected to have relatively high values and are fewer in number than BTA licenses, which will reduce the complexity of implementing a simultaneous stopping rule. Since we intend to impose an activity rule (as discussed below), we believe that allowing simultaneous closing for all licenses will afford bidders flexibility to pursue back-up strategies without running the risk that bidders will hold back their bidding until the final rounds. We also intend to use a simultaneous stopping rule for BTA licenses. However, because of the large number of BTA licenses, we retain the discretion either to use a hybrid stopping rule or to allow bidding to close individually for these licenses if as we gain experience with auctions we determine that simultaneous stopping rules are too complex to implement for very large numbers of licenses. The specific stopping rule for ending bidding on BTA licenses will be announced by Public Notice prior to auction.

48. In addition, we will retain the discretion to declare at any point after 40 rounds in a simultaneous multiple round auction that the auction will end after some specified number of additional rounds.[24] This gives the Commission a means to prevent bidders from

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detail. In discussing the Milgrom-Wilson closing rule they fail to account for the Milgrom-Wilson activity rule, which will reduce the likelihood of delay, and the fail-safe closing mechanism proposed by Milgrom and Wilson. Reply comments of Bell Atlantic Personal Communications, Inc., Attachment of Barry J. Nalebuff and Jeremy I. Bulow at 12.

[24] PacBell proposed that in case of inordinate delays in the auction the Commission should have the ability to conclude the auction at any time after 40 rounds by issuing a call for final bids on the following business day for each of those licenses for which the highest bid increased in at least 1 of the preceding 3 rounds. See reply comments of PacBell, Attachment of Paul Milgrom and Robert Wilson, Appendix at 5.

continuing to bid on a few low value licenses solely to delay the closing for all licenses in an auction with a simultaneous closing rule. This will also ensure that the Commission can end the auction if it determines that the benefits from ending the auction, and hence issuing licenses more rapidly, exceeds the possible efficiency loss from cutting off bidding on a few low value licenses. If we exercise this option, we favor the use of three final rounds. Allowing more than one additional round provides some opportunity for counter-offers, thus reducing the risk that a license will not be awarded to the party that values it most highly.

49. Moreover, if this fail-safe mechanism is used, we will accept bids in the final round(s) only for licenses on which the highest bid increased in at least one of the preceding three rounds. No new bids will be accepted for other licenses.[25] There are two reasons not to take bids on licenses on which there has been no recent bidding. First, the fact that bidding on an individual license may close will provide an additional incentive to bid actively and thus speed the conclusion of the auction. If bids are accepted on all licenses in the final round(s) there is less cost to a bidder in holding back. Second, closing bidding on licenses for which activity has ceased ensures high bidders for those licenses that they will not lose a license without having an opportunity to make a counter-offer.[26] This reduces the uncertainty associated with aggregating licenses that are worth more as a package than individually. If final bids are accepted on all licenses, a high bidder on an aggregation of licenses may unexpectedly lose a critical part of the aggregation and have no chance to regain it except in the post-auction market, where bargaining or other transaction costs may be high.

4. Duration of Bidding Rounds

50. In simultaneous multiple round auctions for large numbers of interdependent high-value licenses, bidders may need a significant amount of time to evaluate back-up strategies and consult with their principals. For this reason, PacBell proposes one bidding round per day and PacTel proposes three business days per bidding round for broadband PCS.[27] We will provide bidders with a single business day to submit bids, and conduct one round of

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[25] See reply comments of PacBell, Appendix to attachment by Milgrom and Wilson at 5. See also Second Report and Order at ¶ 130, n. 106.

[26] Either the auction will close only when bidding ceases on all licenses, so the high bidder will have an opportunity to respond to any new bids, or the Commission will call for final bids but not accept new bids on licenses on which there have been no new bids in the previous three rounds, so no other bidder will have the opportunity to outbid the high bidder in a final round.

[27] Comments of PacBell, Attachment by Milgrom and Wilson at 19; comments of PacTel, Attachment by McAfee at 16.

bidding each business day.[28] However, we reserve the discretion to vary, by public notice or announcement, the duration of bidding rounds or the interval at which bids are accepted (e.g., run two or more rounds per day rather than one), in order to move the auction toward closure more quickly. We are more likely to conduct more than one round per day early in an auction than towards the end of an auction. At early stages of an auction prices will be low and contain relatively little information, so bidders will need less time to deliberate. It is in the final stages of an auction, when the consequences of bidding decisions are greatest, that bidders need the most time to deliberate. We will indicate either by Public Notice prior to an auction, or by announcement during an auction any changes to the duration of and intervals between bidding rounds.

5. Activity Rules

51. As discussed above, in order to ensure that simultaneous auctions with simultaneous stopping rules close within a reasonable period of time and to increase the information conveyed by bid prices during the auction, we believe that it is necessary to impose an activity rule to prevent bidders from waiting until the end of the auction before participating. Because simultaneous stopping rules generally keep all licenses open for bidding as long as anyone wishes to bid, they also create an incentive for bidders to hold back until prices approach equilibrium before making a bid. As noted above, this could lead to very long auctions. Delaying serious bidding until late in the auction also reduces the information content of prices during the course of an auction. Without an activity rule, bidders cannot know whether a low level of bidding on a license means that the license price is near its final level or if instead many serious bidders are holding back and may bid up the price later in the auction.[29] An activity rule is less important when licenses close one-by-one because failure to participate in any given round may result in losing the opportunity to bid at all, if that round turns out to be the last.

52. In the Second Report and Order we adopted the Milgrom-Wilson activity rule as our preferred activity rule where a simultaneous stopping rule is used. See Second Report and Order at ¶¶ 144-145. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. Bidders are required to declare their maximum eligibility in terms of

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[28] With one round per day, the auction may take weeks to complete. This should not impose an excessive burden on bidders, however, because bids may be submitted by telephone or by a computer connected to a telephone line, so bidders need not have a representative in Washington throughout the auction.

[29] See ex parte presentation by Paul Milgrom on behalf of PacBell, June 21, 1994.

MHz-pops, and make an upfront payment equal to $0.02 per MHz-pop.[30] (See discussion of upfront payments infra.) That is, in each round bidders will be limited to bidding on licenses encompassing no more than the number of MHz-pops covered by their upfront payment. Licenses on which a bidder is the high bidder from the previous round count against this bidding limit. Under this approach, bidders will have the flexibility to shift their bids among any licenses for which they have applied so long as, within each round, the total MHz-pops encompassed by those licenses does not exceed the total number of MHz-pops on which they are eligible to bid. Bidders will be able to secure the option to participate at whatever maximum level they deem appropriate by making a sufficient upfront payment. To preserve their maximum eligibility, however, bidders will be required to maintain activity during each round of the auction. A bidder is considered active on a license in the current round if the bidder has submitted an acceptable bid for that license in the current round, or has the high bid for that license from the previous round, in which case, the bidder does not need to bid on that license in the current round to be considered active on that license.

53. Under the Milgrom-Wilson proposal, the minimum activity level, measured as a fraction of the bidder's eligibility in the current round, will increase during the course of the auction.[31] Milgrom and Wilson divide the auction into three stages. During the first stage of the auction, a bidder is required to be active on licenses encompassing one-third of the MHz-pops for which it is eligible. The "penalty" for falling below that activity level is a reduction in eligibility. At this stage, bidders will lose three MHz-pops in eligibility for each MHz-pop below the minimum required activity level.[32] In the second stage, bidders are required to be active on two-thirds of the MHz-pops for which they are eligible. The penalty for falling below that activity level is a loss of 1.5 MHz-pops in eligibility for each MHz-pop below the minimum required activity level. In the third stage, bidders are required to be active on licenses encompassing all of the MHz-pops for which they are eligible. The penalty for falling below that activity level is a loss of one MHz-pop in eligibility for each MHz-pop below the minimum required activity level. Thus in the final stage, each bidder retains eligibility (for the next round) equal to the MHz-pops for which it is an active bidder in the current round.

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[30] The number of "MHz-pops" is calculated by multiplying the population of the license service area by the amount of spectrum authorized by the license. We use the terms "per MHz-pop" and "per MHz per pop" interchangeably.

[31] Absent waivers (discussed infra), a bidder's eligibility (in terms of MHz-pops) in the current round is determined by the bidder's activity level and eligibility in the previous round. In the first round, however, eligibility is determined by the bidder's upfront payment and is equal to the upfront payment divided by $.02 per MHz-pop.

[32] An alternative way to state the rule for determining eligibility in stage I of an auction is that each bidder will be eligible to bid in the next round on three times the MHz-pops for which it is an active bidder in the current round, or the MHz-pops for which it is eligible in the current round, whichever is less.

54. The auction will start in stage I and move from stage I to stage II when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the spectrum (measured in terms of MHz-pops) being auctioned.[33] The auction will move from stage II to stage III when the high bid has increased on 5 percent or less of the spectrum being auctioned (measured in terms of MHz-pops), in each of three consecutive rounds of bidding in stage II.[34] In order to speed up an auction, the Commission may also announce, at any time after the initial 15 rounds, that the next stage of the auction (with a higher minimum participation level) will begin in the next bidding round.[35] Moreover, if as the Commission gains experience with auctions that use activity rules it determines that such auctions tend to move too slowly, it may, by public notice prior to a specific auction, increase the activity levels at which that auction moves between stages. Conversely, if the Commission determines that auctions tend to move too quickly, depriving bidders of sufficient time to deliberate and pursue back-up strategies, it may decrease the activity levels at which an auction moves between stages.

55. Finally, to avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission on a particular day, Milgrom and Wilson recommend permitting each bidder to request and

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[33] The transition rule may also be defined in terms of the "auction activity level" -- the sum of the MHz-pops of those licenses whose highest bid increased in the current round, as a percentage of the total MHz-pops of all licenses in that auction. (Note that this definition differs slightly from that used by Milgrom and Wilson. See reply comments by PacBell, Appendix to attachment by Milgrom and Wilson at 1.) The auction moves from stage I to stage II when the auction activity level is less than or equal to 10 percent for three consecutive rounds in stage I. The auction moves from stage II to stage III when the auction activity level is less than or equal to 5 percent for three consecutive rounds in stage II. For example, if two nationwide 30 MHz blocks of spectrum are put up for bid and the national population is approximately 250 million, a total of approximately 15,000 million MHz-pops would be available in the auction. If in stage I of the auction, the high bid increases on licenses encompassing less than 1,500 million MHz-pops for three consecutive rounds, the auction moves to stage II. This would be the case, for example, if in three consecutive rounds new bids were received on only a license for the New York MTA (26 million pops) and a license for the Los Angeles MTA (19 million pops), since the two licenses encompass a total of 1,350 million MHz-pops. Once in stage II, if in each of three consecutive rounds new acceptable bids are received on licenses encompassing less than 750 million MHz-pops, the auction would move to stage III.

[34] Once an auction is in stage II, it cannot revert to stage I. Once an auction is in stage III, it remains there.

[35] Moving to stage II prematurely might result in an auction moving too quickly to allow adequate time for consideration and may excessively limit the ability of bidders to pursue alternative backup strategies. See Second Report and Order at ¶ 142.

automatically receive a waiver of the activity rule once every three rounds. We believe that some waiver procedure is a critical element of the Milgrom-Wilson activity rule, since the Commission would not wish to reduce a bidder's eligibility due to an accidental act or circumstances not under the bidder's control.

56. We believe that the Milgrom-Wilson approach will best achieve the Commission's goals of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time. Accordingly, we plan to impose such an activity rule in conjunction with a simultaneous stopping rule to award higher value broadband PCS licenses. We intend, however, to use a simpler waiver procedure than that proposed by Milgrom and Wilson. We will permit bidders one automatic waiver from the activity rule during each stage of an auction. A waiver will permit a bidder to maintain its eligibility at the same level as in the round for which the waiver is submitted.[36] A waiver may be submitted either in the round in which bidding falls below the minimum required level to maintain (for the next round) the same eligibility as in that round, or prior to submitting a bid in the next round. If an activity rule waiver is entered in a round in which no other bidding activity occurs, the auction will remain open.[37] However, an activity rule waiver entered after a round in which no other bidding activity occurs will not reopen the auction. If, as we gain both experimental and actual auction experience, we determine that permitting one automatic waiver per auction stage is insufficient to prevent the inadvertent reduction in eligibility of serious bidders , we may, by public notice prior to a specific broadband auction, increase the number of automatic activity rule waivers, or instead allow one automatic waiver during a specified number of bidding rounds.

57. Furthermore, if, as we gain experience with auctions, we determine that the Milgrom-Wilson three stage activity rule is too complicated or costly to administer, we may alternatively impose a less complex activity rule. See Second Report and Order at ¶ 144. We will announce by Public Notice before each auction the activity rule that will be employed in that particular auction.

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[36] An activity rule waiver cannot be used to correct an error in the amount bid.

[37] If, however, we determine, based on evidence from experimental and actual auctions, that this is likely to excessively delay the close of an auction or result in other adverse strategic manipulation of an auction, we may announce by public notice prior to a specific broadband auction that submission of a waiver will not keep an auction open under any circumstances.

V. PROCEDURAL, PAYMENT AND PENALTY ISSUES

A. Pre-Auction Application Procedures

58. In the Second Report and Order, the Commission established general competitive bidding rules and procedures which we noted may be modified on a service-specific basis. See 47 C.F.R. Part 1, subpart Q. As discussed below, we will generally follow the procedural, payment and penalty rules established in the Second Report and Order with certain minor modifications designed to address the particular characteristics of the broadband PCS service. These rules are structured to ensure that bidders and licensees are qualified and will be able to construct systems quickly and offer service to the public. By ensuring that bidders and license winners are serious, qualified applicants, these rules will minimize the need to re-auction licenses and prevent delays in the provision of broadband PCS service to the public. In addition, as we proposed in the Notice at ¶ 129, we adopt general procedural and processing rules based on Part 22 of the Commission's Rules.

59. Section 309(j)(5) provides that no party may participate in an auction "unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing." 47 U.S.C. § 309(j)(5). Moreover, "[n]o license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to [Section 309(a)] and Sections 308(b) and 310" of the Communications Act. Id. As the legislative history of Section 309(j) makes clear, the Commission may require that bidders' applications contain all information and documentation sufficient to demonstrate that the application is not in violation of Commission rules, and applications not meeting those requirements may be dismissed prior to the competitive bidding. See H.R. Rep. No. 111, 103d Cong., 1st Sess. 258 (1993) (H.R. Rep. No. 103-111).

60. In the NPRM, we proposed that all parties interested in participating in an auction for spectrum licenses would be required to file a short-form application (modeled on the Commission's "Transmittal Sheet for Cellular Applications"), and asked whether applicants should also be required to submit a long-form application prior to the auction, or whether the long-form application should be submitted subsequent to the auction. NPRM at ¶ 97. The comments generally agreed that we should require only a short-form application prior to competitive bidding, and that only winning bidders should be required to submit a long-form license application after the auction. Because we believed that such a procedure would fulfill the statutory requirements and objectives and adequately protect the public interest, we incorporated these requirements into the rules adopted in the Second Report and Order. See 47 C.F.R. §§ 1.2105 and 1.2107. We will extend the application of these rules to the competitive bidding process for broadband PCS.

61. We will be guided by the following procedures in conducting broadband PCS auctions. The Commission will release an initial Public Notice announcing that it will accept applications for specific broadband PCS licenses. This initial Public Notice will specify the

licenses and identify the time and place of an auction in the event that mutually exclusive applications are filed. The Public Notice also will specify the method of competitive bidding to be used, including applicable bid submission procedures, stopping rules and activity rules, as well as the deadline by which short-form applications must be filed, and the amounts and deadlines for submitting the upfront payment. See Second Report and Order at ¶ 164. We will not accept applications filed before or after the dates specified in Public Notices. Applications submitted before release of a Public Notice announcing the availability of particular license(s), or before the opening date of the filing window specified therein, will be returned as premature. Applications submitted after the deadline specified by Public Notice will be dismissed, with prejudice, as untimely. Soon after release of the initial Public Notice, an auction information package will be made available to prospective bidders.

62. Bidders will be required to submit short-form applications on FCC Form 175 (and FCC Form 175-S, if applicable), together with any applicable filing fee[38] by the date specified in the initial Public Notice.[39] The short-form applications will require applicants to provide the information required by Section 1.2105(a)(2) of the Commission's Rules, 47 C.F.R. § 1.2105(a)(2). Specifically, each applicant will be required to specify on its Form 175 applications certain identifying information, including its status as a designated entity (if applicable), its classification (i.e., individual, corporation, partnership, trust or other), the markets and frequency blocks for which it is applying, and assuming that the licenses will be auctioned, the names of persons authorized to place or withdraw a bid on its behalf. In addition, applicants will be required to provide detailed ownership information (see Section 24.813(a) of the Commission's Rules, contained in Appendix B hereto) and identify all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Applicants will also be required to certify that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid. In addition, applicants for licenses in the

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[38] Because Section 8 of the Communications Act, 47 U.S.C. § 158, does not currently afford the Commission authority to charge an application fee in connection with PCS applications, broadband PCS applicants will not be required to submit a fee with their short-form application. However, the Commission has requested that Congress amend Section 8 of the Communications Act to provide a specific application fee for PCS services. If the Commission receives application fee authority, the general rules governing submission of fees will apply. See 47 C.F.R. § 1.1101 et seq. These rules currently provide for dismissal of an application if the application fee is not paid, is insufficient, is in improper form, is returned for insufficient funds or is otherwise not in compliance with our fee rules. Whenever funds are remitted to the Commission, applicants also must file FCC Form 159.

[39] Applicants should submit one paper original and one microfiche original of their application, as well as two microfiche copies.

entrepreneurs' blocks will be required, as part of their short-form applications, to certify that they are eligible to bid on and win licenses in those blocks. Among other things, this means that they are in compliance with our PCS-cellular and PCS-PCS cross-ownership limitations. As we indicated in the Second Report and Order, if the Commission receives only one application that is acceptable for filing for a particular license, and thus there is no mutual exclusivity, the Commission by Public Notice will cancel the auction for this license and establish a date for the filing of a long-form application, the acceptance of which will trigger the procedures permitting petitions to deny. See Second Report and Order at ¶ 165.

63. A number of commenters in this proceeding objected to our original tentative conclusion that short-form applications should be judged by a letter-perfect standard. See NPRM at ¶ 100. Parties proposed that the Commission allow a brief period for correcting errors in short-form applications. See, e.g., comments of AT&T at 30-31, BellSouth at 36-37. As we stated in the Second Report and Order, we believe that the public interest would be better served by encouraging maximum bidder participation in auctions. See Second Report and Order at ¶ 167. Therefore, we will provide applicants with an opportunity to correct minor defects in their short-form applications (e.g., typographical errors, incorrect license designations, etc.) prior to the auction. Applicants will not be permitted until after the auction, however, to make any major modifications to their applications, including cognizable ownership changes or changes in the identification of parties to bidding consortia. In addition, applications that are not signed will be dismissed as unacceptable.

64. After reviewing the short-form applications, the Commission will issue a second Public Notice listing all defective applications, and applicants whose applications contain minor defects will be given an opportunity to cure defective applications and resubmit a corrected version.[40] After reviewing the corrected applications, the Commission will release a third Public Notice announcing the names of all applicants whose applications have been accepted for filing. These applicants will be required to submit an upfront payment to the Commission, as discussed below.

B. Upfront Payment

65. The comments in this proceeding generally supported the Commission's proposal to require prospective bidders to make substantial upfront payments prior to auction. See, e.g., comments of Comcast at 18, PacBell at 28, Nextel at 16, and AWCC at 31-32. Consistent with the weight of the comments, we concluded in the Second Report and Order that a substantial upfront payment prior to the beginning of an auction is necessary to ensure that only serious and qualified bidders participate. See Second Report and Order at ¶ 171. By requiring such a payment we also help to ensure that any bid withdrawal or default penalties are paid. These considerations apply to broadband PCS auctions. We will therefore

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[40] On the date set for submission of corrected applications, applicants that on their own discover minor errors in their applications also will be permitted to file corrected applications.

require all broadband PCS auction participants to tender in advance to the Commission a substantial upfront payment as a condition of bidding.

66. In the Notice, we proposed to require upfront payments based on a $0.02 per MHz per pop formula. Though some commenters favor a fixed upfront payment set by the Commission prior to the auction,[41] most support the Commission's proposed $0.02 per MHz per pop formula, which would enable prospective bidders to tailor their upfront payment to their bidding strategies.[42] Commenters suggest that there should be some fixed minimum on the amount of upfront payment made prior to auction (suggestions range from $2,500 to $100,000 for different services).[43] Some commenters also favor setting a maximum upfront payment, pointing out that our proposed formula yields very high payments in the broadband PCS context.[44]

67. We believe that the standard upfront payment formula of $0.02 per pop per MHz for the largest combination of MHz-pops a bidder anticipates bidding on in any single round of bidding is appropriate for broadband PCS services.[45] Using this formula will provide bidders with the flexibility to change their strategy during an auction and to bid on a larger number of smaller licenses or a smaller number of larger licenses, so long as the total MHz-pops combination does not exceed that amount covered by the upfront payment. For example, when we auction licenses covering the nation simultaneously, a bidder would not be required to file an upfront payment representing national coverage unless it intended to bid on licenses covering the entire nation in a single bidding round. The $0.02 per MHz per pop formula also works well with the Milgrom-Wilson activity rule that we plan to employ in broadband PCS auctions, as described in Section III above. In the initial Public Notice issued prior to each auction, we will announce population information corresponding to each license to enable bidders to calculate their upfront payments.

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[41] See, e.g., comments of Edward M. Johnson at 2; and LuxCel Group, Inc. at 8.

[42] See, e.g., comments of PacBell at 28; Telocator (now PCIA) at 13; CTIA at 30; and Rochester Telephone Corporation at 13.

[43] See, e.g., comments of Telocator at 20-21; Cellular Communications, Inc. at 15; AT&T at 34; and BellSouth at 41.

[44] See, e.g., comments of Southwestern Bell at 38-40 (arguing generally for a maximum deposit of $50 million for all markets) and AT&T at 34 (supporting a maximum upfront payment of $5 million, with a down payment following the auction).

[45] As discussed in Section VII, infra, designated entities will be subject to a lesser upfront payment requirement of $0.015 per MHz per pop. Further, we retain the flexibility to consider using a simpler payment requirement if circumstances warrant.

68. As we indicated in the Second Report and Order, we will not set a maximum on upfront payments.[46] We decline to do so because we wish to ensure that those bidding on large numbers of valuable broadband PCS licenses are bidding in good faith and are financially capable of constructing those systems quickly. We recognize that upfront payments for broadband PCS licenses may amount to millions of dollars, but we do not believe that it is unreasonable to expect prospective bidders to tender such sums given the expected overall value of some of these licenses and the expected financial requirements to construct the systems. Indeed, such a requirement is necessary to ensure the seriousness of bidders for these valuable licenses.

69. In the Second Report and Order, we accepted commenters' suggestions and established a general minimum upfront payment of $2,500 to ensure that the use of our preferred formula would result in a substantial enough payment that bidders would be deterred from making frivolous bids.[47] Such a minimum upfront payment is needed in connection with auctions where the $0.02 per MHz per pop formula would yield a comparatively small upfront payment (such as those for narrowband PCS licenses in BTAs). Because of the wider bandwidth of broadband PCS licenses, however, this minimum upfront payment will not be relevant in auctions for this service.[48]

70. For broadband PCS auctions, we will follow the procedures for submission of upfront payments outlined in the Second Report and Order. Applicants whose short-form applications have been accepted for filing will be required to submit the full amount of their upfront payment to the Commission's lock-box bank by a date certain, which will be announced in a Public Notice and generally will be no later than 14 days before the scheduled auction.[49] After the Commission receives from its lock-box bank the names of all applicants who have submitted timely upfront payments, the Commission will issue a Public Notice announcing the names of all applicants that have been determined to be qualified to bid. An applicant who fails to submit a sufficient upfront payment to qualify it to bid on any license being auctioned will not be identified on this Public Notice as a qualified bidder, and it will

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[46] See Second Report and Order at ¶ 179.

[47] Id. at ¶ 180.

[48] The smallest bandwidth that a broadband PCS licensee will be authorized to use is 10 MHz, so a $2,500 upfront payment would result for a license area with a population of only 12,500 persons. The least populous BTA in the United States (Williston, North Dakota) has a population of approximately 27,500, and the upfront payment for a 10 MHz license in that BTA would be approximately $5,500.

[49] Upfront payments must be made by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

be prohibited from bidding in the auction. That is, we will require that applicants for broadband PCS licenses submit a sufficient upfront payment to reflect the MHz-pops of the smallest license being put up for bid in a particular auction.[50]

71. Although it would be simpler to require the submission of upfront payments at the same time short-form applications are filed, we agree with those commenters that argued that they should not be required to commit the large sums that will likely be involved in broadband PCS upfront payment for longer than is necessary. Accordingly, applicants will not be required to tender upfront payments with their short-form applications. Instead, as noted above, upfront payments will be due by a date specified by Public Notice, but generally no later than 14 days before a scheduled auction. This period should be sufficient to allow the Commission adequate time to process upfront payment data and release a Public Notice listing all qualified bidders, but not so long as to impose undue burdens upon bidders. The rules set forth in Section 1.2106 of the Commission's Rules concerning upfront payments will be applicable in broadband PCS auctions. Each qualified bidder will be issued a bidder identification number and further information and instructions regarding the auction procedures. During an auction, bidders will be required to provide their bidder identification numbers when submitting bids.

C. Payment and Procedures for Licenses Awarded by Competitive Bidding

1. Down Payment

72. The Second Report and Order established a 20 percent down payment by winning bidders to discourage default between the auction and licensing and to ensure payment of the penalty if such default occurs. We concluded that a 20 percent down payment was appropriate to ensure that auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system, while at the same time not being so onerous as to hinder growth or diminish access. Most of the commenters addressing this issue generally support our proposal that winning bidders increase their deposits with the Commission up to an amount equalling 20 percent of their winning bid or bids. See, e.g., comments of BellSouth at 43-44, PageNet at 35-36, and Telocator at 13. Some commenters feel that a 20 percent down payment requirement would be too high. See comments of Sprint at 18 (prefers a 10 percent down payment).

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[50] For example, in our first broadband PCS auction (the 30 MHz MTA licenses on blocks A and B), the smallest upfront payment that may be submitted to qualify an applicant to bid will be calculated by multiplying the population of the least populous MTA (American Samoa: population 47,000) times 30 times two cents, or $28,200. It should be noted, however, that this minimal upfront payment will entitle the bidder to bid only on a license to serve American Samoa.

73. We believe that the reasoning that led us to conclude that 20 percent is the appropriate down payment applies to broadband PCS auctions. We therefore will require that, with the exception of bidders eligible for installment payments in the entrepreneurs' blocks (see Section VII, infra), winning bidders in broadband PCS auctions supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).[51] Winning bidders will be required to submit the required down payment by cashier's check or wire transfer to our lock-box bank by a date to be specified by Public Notice, generally within five (5) business days following the close of bidding. All auction winners will generally be required to make full payment of the balance of their winning bids within five (5) business days following award of the license. Grant of the license will be conditioned on this payment.

74. An auction winner that is eligible to make payments through an installment plan (see Section VII, infra) will be subject to different payment requirements. Such an entity will be required to bring its deposits with the Commission up to only 5 percent of its winning bid after the bidding closes, and will pay an additional 5 percent of its winning bid to the Commission after a license is granted.

2. Bid Withdrawal and Default Penalties

75. As we discussed in the Second Report and Order, it is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or default on payment of a balance due. There was substantial support in the comments for the notion that the Commission is authorized to and should order forfeiture of upfront and down payments if the auction winner later defaults or is disqualified. See, e.g., comments of CTIA at 29-30, AT&T at 35, n.43, PageNet at 35-36, Cook Inlet at 47, and BellSouth at 42-44. We concluded, however, that forfeiture of all amounts that a bidder may have on deposit with the Commission may, in some circumstances, be too severe a penalty and would not necessarily be rationally related to the harm caused by withdrawal, default or disqualification. See Second Report and Order at ¶ 197.

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[51] If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default penalties due, amounts to 20 percent or more of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default penalties due, the additional monies will be refunded. If a bidder has withdrawn a bid or defaulted but the amount of the penalty cannot yet be determined, the bidder will be required to make a deposit of 20 percent of the amount bid on such licenses. When it becomes possible to calculate and assess the penalty, any excess deposit will be refunded. Upfront payments will be applied to such deposits and to bid withdrawal and default penalties due before being applied toward the bidder's down payment on licenses the bidder has won and seeks to acquire.

76. This logic applies to broadband PCS auctions, so for these auctions we will employ the bid withdrawal, default and disqualification penalties adopted in the Second Report and Order, which are reflected in Sections 1.2104(g) and 1.2109 of the Commission's Rules. Any bidder who withdraws a high bid during an auction before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid.[52] No withdrawal penalty will be assessed if the subsequent winning bid exceeds the withdrawn bid. After bidding closes, a defaulting auction winner (i.e., a winner who fails to remit the required down payment within the prescribed time, fails to pay for a license, or is otherwise disqualified) will be assessed an additional penalty of three percent of the subsequent winning bid or three percent of the amount of the defaulting bid, whichever is less. See 47 C.F.R. §§ 1.2104(g) and 1.2109. The additional three percent penalty is designed to encourage bidders who wish to withdraw their bids to do so before bidding ceases. We will hold deposits made by defaulting or disqualified auction winners until full payment of the penalty.[53] We believe that these penalties will adequately discourage default and ensure that bidders have adequate financing and that they meet all eligibility and qualification requirements. As we explained in the Second Report and Order, we further believe that this approach is well within our authority under both Section 309(j)(4)(B) and Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), as it is clearly necessary to carry out the rapid deployment of new technologies through the use of auctions.[54]

77. In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems

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[52] If a license is re-offered by auction, the "winning bid" refers to the high bid in the auction in which the license is re-offered. If a license is re-offered in the same auction, the winning bid refers to the high bid amount, made subsequent to the withdrawal, in that auction. If the subsequent high bidder also withdraws its bid, that bidder will be required to pay a penalty equal to the difference between its withdrawn bid and the amount of the subsequent winning bid the next time the license is offered by the Commission. If a license which is the subject of withdrawal or default is not re-auctioned, but is instead offered to the highest losing bidders in the initial auction, the "winning bid" refers to the bid of the highest bidder who accepts the offer. Losing bidders would not be required to accept the offer, i.e., they may decline without penalty. We wish to encourage losing bidders in simultaneous multiple round auctions to bid on other licenses, and therefore we will not hold them to their losing bids on a license for which a bidder has withdrawn a bid or on which a bidder has defaulted.

[53] In rare cases in which it would be inequitable to retain a down payment, we will entertain requests for waiver of this provision.

[54] See Second Report and Order at ¶ 198.

necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See Second Report and Order at ¶ 198.

3. Re-Offering Licenses When Auction Winners Default

78. In the event that an auction winner defaults or is otherwise disqualified, the Commission must determine whether to hold a new auction or simply offer the license to the second-highest bidder. Parties commenting on this issue generally favored re-auctioning the license, pointing out that changing market and even technological developments since the initial auction may change the amounts that bidders are willing to pay for a license, especially if the intervening period is relatively long. They urge that any re-auction be open to new bidders, arguing that such a procedure would reduce the incentive of losing bidders to file unmeritorious petitions to deny against the auction winner. See, e.g., comments of BellSouth at 37, Utilities Telecommunications Council at 21.

79. As we stated in the Second Report and Order, we believe that, as a general rule, when an auction winner defaults or is otherwise disqualified after having made the required down payment, the best course of action is to re-auction the license. See Second Report and Order at ¶ 204. Although we recognize that this may cause a brief delay in the initiation of service to the public, during the time between the original auction and the disqualification circumstances may have changed so significantly as to alter the value of the license to auction participants as well as to parties who did not participate. In this situation, awarding licenses to the parties that value them most highly can best be assured though a re-auction. However, if the default occurs within five (5) business days after the bidding has closed, the Commission retains the discretion to offer the license to the second highest bidder at its final bid level, or if that bidder declines the offer, to offer the license to other bidders (in descending order of their bid amounts) at the final bid levels.[55]

80. If a new auction becomes necessary because of default or disqualification more than five (5) business days after bidding has ended, the Commission will afford new parties an opportunity to file applications. One of our primary goals in conducting auctions is to assure that all serious interested bidders are in the pool of qualified bidders at any re-auction. We believe that allowing new applications will promote achievement of this goal, which outweighs the short delay that we recognize may result from allowing new applications in a re-auction. Indeed, if we were not to allow new applicants in a re-auction, interested parties might be forced into an after-market transaction to obtain the license, which would itself delay service to the public and may prevent the public from recovering a reasonable portion of the value of the spectrum resource.

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[55] If only a small number of relatively low-value licenses are to be re-auctioned and only a short time has passed since the initial auction, the Commission may choose to offer the license to the highest losing bidders because the cost of running another auction may exceed the benefits.

4. Long-Form Application

81. If the winning bidder makes the down payment in a timely manner, a long-form application filed on FCC Form 401 (as modified), or such other form as may be adopted for Commercial Mobile Radio Service use in GEN Docket No. 93-252, will be required to be filed by a date specified by Public Notice, generally within ten (10) business days after the close of bidding.[56] After the Commission receives the winning bidder's down payment and the long-form application, we will review the long-form application to determine if it is acceptable for filing. In addition to the information required in the long-form application of all winning bidders, each winning bidder on licenses in frequency blocks C and F will be required to submit evidence of its eligibility to bid on licenses in these blocks, as well as evidence to support its claim to any special provisions made available to designated entities. This information may be included in an exhibit to FCC Form 401, and must include the gross revenues and total assets of the applicant and all attributable investors in the applicant, and a certification that the personal net worth of each individual investor does not exceed the eligibility limitation. This information will enable the Commission, and other interested parties, to ensure the validity of the applicant's certification of eligibility to bid in blocks C and F (submitted as part of its FCC Form 175) and its eligibility for any bidding credits, installment payment options, or other special provision. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, the license(s) will be granted to the auction winner.

5. Processing and Procedural Rules

82. In the Notice, we proposed to adopt general processing and procedural rules for broadband PCS based on Part 22 of the Commission's Rules. One commenter, AIDE, argues that the Commission's reference to proposed PCS rules is vague and legally insufficient for a Notice of Proposed Rule Making. Comments of AIDE at 16-17. AIDE also asserts that the adoption of PCS processing and procedural rules is beyond the scope of the Notice in this

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[56] Schedule B to FCC Form 401 will not be required to be submitted by broadband PCS applicants. However, applicants for broadband PCS licenses proposing to use any portion of broadband PCS spectrum to offer service on a private mobile radio service basis must overcome the presumption that PCS is a commercial mobile radio service. Regulatory Treatment of Mobile Services, Second Report and Order in GEN Docket No. 93-252, 9 FCC Rcd 1411, 1460-63 (1994); 47 C.F.R. § 20.9(a)(11), (b). Applicants (or licensees) seeking to dedicate a portion of the spectrum for private mobile radio service will be required to attach as an exhibit to the Form 401 application a certification that it will offer PCS service on a private mobile radio basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in Section 20.3 of the Commission's Rules. Id.

rule making proceeding. Id. We disagree. The Notice sought comment on specific rule sections contained in Part 22 of our Rules and asked commenters to indicate what modifications should be made to those rules to adapt them for PCS services. See Notice at ¶ 128. In addition the Notice specifically requested comment on the general procedural, processing and petition to deny procedures that should be used for auctionable services. The Notice's proposal to adopt processing rules based on Part 22 of the Commission's Rules, with any appropriate modifications for PCS services, clearly indicated to commenters the terms of the proposed rules, as is required by 5 U.S.C. § 553 and 47 C.F.R. § 1.413(c). Accordingly, we believe that the Notice's description of the proposed rules was sufficiently specific to alert interested parties to the substance of our proposal and to provide an adequate opportunity for comment on those proposals. Moreover, we conclude that these issues are well within the scope of the Notice.

83. As we proposed, we adopt for broadband PCS a modified version of the application processing rules contained in Part 22 of the Commission's Rules. These rules, which will comprise Subpart I of Part 24 of our Rules, will govern application filing and content requirements, waiver procedures, procedures for return of defective applications, regulations regarding modification of applications, and general application processing rules. We also adopt petition to deny procedures based on Section 22.30 of the Commission's Rules. In addition, as we proposed in the Notice, we adopt rules similar to Sections 22.927, 22.928 and 22.929 of our existing rules (47 C.F.R. §§ 22.927, 22.928, 22.929) to prevent the filing of speculative applications and pleadings (or threats of the same) designed to extract money from sincere broadband PCS applicants. In this regard, we limit the consideration that an applicant or petitioner is permitted to receive for agreeing to withdraw an application or a petition to deny to the legitimate and prudent expenses of the withdrawing applicant or petitioner. These rules are included in Appendix B.

84. With regard to petitions to deny, we adopt expedited procedures consistent with the provisions of Section 309(i)(2) of the Communications Act to resolve substantial and material issues of fact concerning qualifications.[57] This provision requires us to entertain petitions to deny the application of the auction winner if petitions to deny are otherwise provided for under the Communications Act or our Rules.

85. As we indicated in the Second Report and Order, the Commission need not conduct a hearing before denying an application if it determines that an applicant is not qualified and no substantial issue of fact exists concerning that determination. See Second Report and Order at ¶ 202. In the event that the Commission identifies substantial and material issues of fact in need of resolution, Section 309(i)(2) of the Communications Act permits in any hearing the submission of all or part of evidence in written form and allows

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[57] The adoption of such procedures is necessary because Section 309(j)(5) of the Communications Act forbids the granting of licenses through competitive bidding unless the Commission determines that the applicant is qualified.

employees other than administrative law judges to preside over the taking of written evidence. We will incorporate these principles into our broadband PCS procedural rules.

D. Procedures in Alternative Auction Design

86. If we decide to employ a sequential auction design (using either oral or electronic bid submission), the same general rules and procedures described above will be used with certain modifications to fit the oral or electronic auction format. In the case of oral auctions, bidders would be required to follow the procedures described above, including the submission of the standard upfront payment of $0.02 per MHz-pop prior to the auction. Applicants would submit a sufficient upfront payment to cover the total number of MHz-pops they desire to win. Once a bidder has won the maximum number of MHz-pops covered by its upfront payment, that bidder will be precluded from further bidding in the auction.[58] Immediately after bidding closes on a license, the winning bidder (i.e., the high bidder on a license on which bidding has closed) will be asked to sign a bid confirmation form. No other license will be put up for bid until a bid confirmation form is signed by a high bidder on the previous license.[59] Because we recognize that in an oral auction the chances of a bidder accidentally placing a high bid are greater than in other auction methods, and because the harm will be limited if the license is immediately re-offered, we will not impose a penalty on a high bidder who withdraws a high bid by refusing to sign the bid confirmation form. Thus, in an sequential oral auction in which a high bidder declines to sign the bid confirmation form, the license will be immediately put up for bid again. If, however, a high bidder signs a bid confirmation form but subsequently fails to submit the 20 percent down payment or otherwise defaults, the standard default penalties (described supra) will apply.[60]

87. If we decide to use sequential electronic bidding, bidders would again follow the general procedures described above including the submission of the standard upfront payment amount of $0.02 per MHz per pop prior to the auction. Applicants would submit a sufficient upfront payment to cover the total number of MHz-pops they desire to win. An applicant will not be eligible to bid on a license for which it has not applied or which contains more MHz-pops than the total MHz-pops covered by the bidder's upfront payment less any MHz-pops already won by that bidder. Once a bidder has won licenses representing the maximum number of MHz-pops reflected in its upfront payment, that bidder will be precluded from further bidding in the auction. Each bidder's eligibility will be computed and

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[58] This is similar to the procedure adopted in the Fourth Report and Order for the oral auctioning of IVDS licenses. See Fourth Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2330 (released May 10, 1994).

[59] If we use single combined bidding, described supra, no other licenses will be put up for bid until a bid confirmation form is signed for each license put up for bid together in a combined auction.

[60] See 47 C.F.R. §§ 1.2104 and 1.2109.

tracked by the auction software and bids placed by ineligible bidders will not be accepted. After the auctioneer declares bidding on a license closed and the high bidder has been notified, that bidder will be asked to confirm its high bid. If the high bidder in a sequential electronic auction declines to confirm its high bid, the license will be immediately re-auctioned and no penalty will be imposed. No other licenses will be put up for bid until a bid confirmation form is signed by a high bidder on the previous license.[61] As with sequential oral auctions, if a high bidder signs a bid confirmation form but subsequently fails to submit the 20 percent down payment or otherwise defaults, the standard default penalties (described supra) will apply.

VI. REGULATORY SAFEGUARDS

A. Transfer Disclosure Requirements

88. In Section 309(j), Congress directed the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits." 47 U.S.C. § 309(j)(4)(E). In the Second Report and Order, the Commission adopted safeguards designed to ensure that the requirements of Section 309(j)(4)(E) are satisfied. See Second Report and Order at ¶¶ 210-226 and 258-265.

89. In the Second Report and Order (at ¶ 214), we stated our belief that it is important to monitor transfers of licenses awarded by competitive bidding in order to accumulate the data necessary to evaluate our auction designs and to judge whether "licenses [have been] issued for bids that fall short of the true market value of the license." H.R. Rep. No. 103-111 at 257. Therefore, we imposed a transfer disclosure requirement on licenses obtained through the competitive bidding process, whether by a designated entity or not. See 47 C.F.R. § 1.2111(a). We believe that the transfer disclosure requirements contained in Section 1.2111(a) of the Commission's Rules should apply to all broadband PCS licenses obtained through the competitive bidding process. Generally, licensees transferring their licenses within three years after the initial license grant will be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license. As we indicated in the Second Report and Order, we will give particular scrutiny to auction winners who have not yet begun commercial service and who seek approval for a transfer of control or assignment of their licenses within three years after the initial license grant, in order to determine if any unforeseen problems relating to unjust enrichment have arisen outside the designated entity context. See Second Report and Order at

[61] See also n. 59, supra.

¶ 214.[62]

B. Performance Requirements

90. The Budget Act requires the Commission to "include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services."[63] In the Second Report and Order we decided that it was unnecessary and undesirable to impose additional performance requirements, beyond those already provided in the service rules, for all auctionable services. The broadband PCS service rules already contain specific performance requirements, such as the requirement to construct within a specified period of time. See, e.g., 47 C.F.R. § 24.203. Failure to satisfy these construction requirements will result in forfeiture of the license. Accordingly, we do not see the need to adopt any additional performance requirements in this Report and Order.

C. Rules Prohibiting Collusion

91. In the Second Report and Order, we adopted a special rule prohibiting collusive conduct in the context of competitive bidding. See 47 C.F.R. § 1.2105(c). We referred to the Notice, wherein we indicated our belief that such a rule would serve the objectives of the Budget Act by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and disadvantage other bidders. See Second Report and Order at ¶ 221. We believe that this rule is nowhere more necessary than with respect to broadband PCS auctions, where we expect bidder interest to be high and the incentives to collude to be great. Thus, Section 1.2105(c) will apply to broadband PCS auctions. This rule provides that from the time the short-form applications are filed until the winning bidder has made its required down payment, all bidders will be prohibited from cooperating, collaborating, discussing or disclosing in any manner the substance of their bids or bidding strategies with other bidders, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application. In addition, as discussed in Section IV, supra, bidders will be required by Section 1.2105(a)(2) of the Commission's Rules to identify on their Form 175 applications all parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate to the competitive bidding process. Bidders will also be required to certify that they have not entered and will

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[62] We note that these transfer disclosure provisions are in addition to the limitations on transfers that we have adopted in the Broadband PCS Reconsideration Order (with respect to spectrum disaggregation) or elsewhere in this Order (with respect to transfers of licenses in the entrepreneurs' blocks).

[63] See Section 309(j)(4)(B) of the Communications Act, as amended.

not enter into any explicit or implicit agreements, arrangements or understandings with any parties, other than those identified, regarding the amount of their bid, bidding strategies or the particular properties on which they will or will not bid.

92. Winning bidders in broadband PCS auctions will also be subject to Section 1.2107 of the Commission's Rules, which among other things requires each winning bidder to attach as an exhibit to the Form 401 long-form application a detailed explanation of the terms and conditions and parties involved in any bidding consortium, joint venture, partnership, or other agreement or arrangement they had entered into relating to the competitive bidding process prior to the close of bidding. All such arrangements must have been entered into prior to the filing of short-form applications. In addition, where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with participation in the auction process may be subject to forfeiture of their down payment or their full bid amount and revocation of their license(s), and they may be prohibited from participating in future auctions.

VII. TREATMENT OF DESIGNATED ENTITIES

A. Overview and Objectives

93. Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. § 309(j)(4)(D). To achieve this goal, the statute requires the Commission to "consider the use of tax certificates, bidding preferences, and other procedures." Thus, while providing that we charge for licenses, Congress has ordered that the Commission design its auction procedures to ensure that designated entities have opportunities to obtain licenses and provide service. For that purpose, the law does not mandate the use of any particular procedure, but it specifically approves the use of "tax certificates, bidding preferences, and other procedures." The use of any such procedure is, in our view, mandated where necessary to achieve Congress's objective of ensuring that designated entities have the opportunity to participate in broadband PCS.

94. In addition to this mandate, the statute sets forth various congressional objectives. For example, it provides that in establishing eligibility criteria and bidding methodologies the Commission shall "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. § 309(j)(3)(B); see also id. §309(j)(4)(C) (requiring the Commission when prescribing area designations and bandwidth

assignments, to promote "economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women).[64] Further, Section 309(j)(4)(A) provides that to promote the statute's objectives the Commission shall "consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods . . . and combinations of such schedules and methods."

95. To satisfy these statutory mandates and objectives, we established in the Second Report and Order eligibility criteria and general rules that would govern the special measures for small businesses, rural telephone companies, and businesses owned by members of minority groups and women. We also identified several measures, including installment payments, spectrum set-asides, bidding credits and tax certificates, that we could choose from in establishing rules for auctionable spectrum-based services. We stated that we would decide whether and how to use these special provisions, or others, when we developed specific competitive bidding rules for particular services. In addition, we set forth rules designed to prevent unjust enrichment by designated entities who transfer ownership in licenses obtained through the use of these special measures or who otherwise lose their designated entity status.

96. We intend in the new broadband personal communications service to meet fully the statutory mandate of Section 309(j)(4)(D), as well as the objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. As explained more fully in this Order, in some respects it is necessary to do more to ensure that businesses owned by members of minority groups and women have a meaningful opportunity to participate in the provision of personal communications services than is necessary to ensure participation by other designated entities. In particular, we have concluded that steps such as adoption of bidding credits, tax certificates, alternate payment plans and relaxed attribution rules, must be taken to encourage investment in minority and women-owned businesses. These special provisions are tailored to address the major problem facing minorities and women desiring to offer PCS -- lack of access to capital. Moreover, because broadband PCS licenses in many cases are expected to be auctioned for large sums of money in the competitive bidding process, and because build-out costs are likely to be high, it is necessary to do more to ensure that designated entities have the opportunity to participate in broadband PCS than is necessary in

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[64] As noted in the Second Report and Order, the statute also requires the Commission to promote the purposes specified in Section 1 of the Communications Act, which include, among other things, "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges." 47 U.S.C. § 151; Second Report and Order at n. 3.

other, less costly spectrum-based services. In our view, these steps and the others we adopt are required to fulfill Congress's mandate that designated entities have the opportunity to participate in the provision of PCS. The measures we adopt today will also increase the likelihood that designated entities who win licenses in the auctions become strong competitors in the provision of broadband PCS service.

97. In instructing the Commission to ensure the opportunity for designated entities to participate in auctions and spectrum-based services, Congress was well aware of the difficulties these groups encounter in accessing capital. Indeed, less than two years ago, Congress made specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit."[65] Because of these problems, Congress resolved to consider carefully legislation and regulations "to ensure that small business concerns are not negatively impacted" and to give priority to passage of "legislation and regulations that enhance the viability of small business concerns."[66]

98. Congress also recognized that these funding problems are even more severe for minority and women-owned businesses, who face discrimination in the private lending market. For example, Congress explicitly found that businesses owned by minorities and women have particular difficulties in obtaining capital and that problems encountered by minorities in this regard are "extraordinary."[67] A number of studies also amply support the existence of widespread discrimination against minorities in lending practices. In October, 1992, the year prior to passage of the auction law, the Federal Reserve Bank of Boston released an important and highly-publicized study demonstrating that a black or Hispanic applicant in the Boston area is roughly 60 percent more likely to be denied a mortgage loan than a similarly situated white applicant.[68] The researchers measured every variable mentioned as important in numerous conversations with lenders, underwriters, and examiners and found that minority applicants are more likely to be denied mortgages even where they have the same obligation ratios, credit history, loan to value and property characteristics as white applicants. The lending discrimination that occurs, the study found, does not involve the application of specific rules, but instead occurs where discretionary decisions are made. Based on the Boston study, it is reasonable to expect that race would affect business loans that are based on more subjective criteria to an even greater extent than the mortgage loan

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[65] Small Business Credit and Business Opportunity Enhancement Act of 1992, Section 331(a) (3), Pub. Law 102-366, Sept. 4, 1992.

[66] Id., Section 331(b)(2),(3).

[67] Id., Section 112(4); 331(a)(4).

[68] Mortgage Lending in Boston: Interpreting HMDA Data, Federal Reserve Bank of Boston, Working Paper 92-7 (October 1992).

process, which uses more standard rules.

99. Importantly, the Boston study also found that, because most loan applicants have some negative attributes, most loan denials will appear legitimate by some objective standard. Accordingly, the study stated, the lending discrimination that occurs is very difficult to document at the institution level, so legal remedies may be largely ineffective. Indeed, Congress had already attempted to address discriminatory lending practices through laws that bar discrimination in lending, such as the Equal Credit Opportunity Act, enacted in 1974 and amended many times since then. Congress, therefore, could reasonably assume, based on the Boston study, and its legislative experience regarding discriminatory lending practices, that minority applicants for licenses issued in spectrum auctions would face substantial (albeit subtle) barriers to obtaining financing. Any legal remedies, even if effective, would, moreover, come too late to ensure that minorities are able to participate in spectrum auctions and obtain licenses.

100. Similar evidence presented in testimony before the House Minority Enterprise Subcommittee on May 20, 1994 indicates that African American business borrowers have difficulty raising capital mainly because they have less equity to invest, they receive fewer loan dollars per dollar of equity investment, and they are less likely to have alternate loan sources, such as affluent family or friends. Assuming two hypothetical college educated, similarly-situated male entrepreneurs, one black, one white, the testimony indicated that the white candidate would have access to $1.85 in bank loans for each dollar of owner equity invested, while the black candidate would have access to only $1.16. According to the testimony, the problems associated with lower incomes and intergenerational wealth, as well as the discriminatory treatment minorities receive from financial institutions, make it much more likely that minorities will be shut out of capital intensive industries, such as telecommunications. This testimony also noted that African American representation in communications is so low that it was not possible to generate meaningful summary statistics on underrepresentation.[69]

101. The inability to access capital is also a major impediment to the successful participation of women in broadband PCS auctions. In enacting the Women's Business Ownership Act in 1988, Congress made findings that women, as a group, are subject to discrimination that adversely affects their ability to raise or secure capital.[70] As AWRT

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[69] Testimony of Dr. Timothy Bates, Visiting Fellow, The Woodrow Wilson Center, before the U.S. House of Representatives Committee on Small Business, Subcommittee on Minority Enterprise, Finance, and Urban Development (House Minority Enterprise Subcommittee), May 20, 1994.

[70] Pub. L. 100-533 (1988). In 1991, Congress enacted the Women's Business Development Act of 1991 to further assist the development of small businesses owned by women. See Pub. L. 102-191 (1991).

documents, these discriminatory barriers still exist today. Indeed, AWRT reports that while venture capital is an important source of funding for telecommunications companies, women-owned companies received only approximately one percent of the $3 billion invested by institutional venture capitalists in 1993. Citing a 1992 National Women's Business Council report, AWRT further argues that even successful women-owned companies did not overcome these financing obstacles after they had reached a level of funding and profitability adequate for most other businesses.[71]

102. A study prepared in 1993 by the National Foundation for Women Business Owners (NFWBO) further illustrates the barriers faced by women-owned businesses. For example, it finds that women-owned firms are 22 percent more likely to report problems dealing with their banks than are businesses at large. In addition, the NFWBO study finds that the largest single type of short-term financing used by women business owners is credit cards and that over half of women-owned firms use credit cards for such purposes, as compared to 18 percent of all small to medium-sized businesses, which generally use bank loans and vendor credit for short-term credit needs. With regard to long-term financing, the study states that a greater proportion of women-owned firms are turning, or are forced to turn, to private sources, and to a wider variety of sources, to fulfill their needs. Based on these findings, the NFWBO study concludes that removal of financial barriers would encourage stronger growth among women-owned businesses, resulting in much greater growth throughout the economy.[72]

103. If we are to meet the congressional goals of promoting economic opportunity and competition by disseminating licenses among a wide variety of providers, we must find ways to counteract these barriers to entry. Over the years, both Congress and the Commission have tried various methods to enhance access to the broadcast and cable industries by minorities and women. For example, in the late 1960s, the FCC began to promote nondiscriminatory employment policies by broadcast licensees. These equal employment opportunity efforts have taken the form of Commission rules and policies that require licensees not to discriminate, to report hiring and promotion statistics, and to implement affirmative action programs.[73] The Commission also has adopted similar equal employment rules for licensees in the common carrier, public mobile, and international fixed

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[71] See Letter of AWRT to the Honorable Kweisi Mfume, Chairman, House Minority Enterprise Subcommittee, June 1, 1994.

[72] See The National Foundation for Women Business Owners, Financing the Business, A Report on Financial Issues from the 1992 Biennial Membership Survey of Women Business Owners, October 1993.

[73] 47 C.F.R. § 73.2080 (broadcasters must "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of the station's employment policy and practice").

public radio communication services,[74] as well for cable operators.[75] The cable EEO rules were recently revised as part of the implementation of the Cable Act of 1992, and they now apply to cable entities, satellite master antenna television operators serving 50 or more subscribers and any multichannel video programming distributor.[76]

104. A decade after it first addressed discriminatory hiring practices, the Commission began to look into the serious underrepresentation of minorities among owners of broadcast stations. Recognizing that it could play an important role in alleviating this problem through the licensing process, the Commission adopted its tax certificate and distress sale policies in 1978 to encourage minority ownership of broadcast facilities.[77] It noted that full minority participation in the ownership and management of broadcast facilities would result in a more diverse selection of programming and would inevitably enhance the diversity of control of a valuable resource, the electromagnetic spectrum.[78]

105. In implementing these ownership policies, the Commission identified lack of access to capital as one of the principal barriers to minority entry. Thus, in 1981, the Commission created the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications (the "Rivera Committee") to investigate financing methods and to give recommendations to the FCC on ways to encourage minority ownership of telecommunications facilities.[79] The Rivera Committee confirmed that the shortage of

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[74] 47 C.F.R. §§ 21.307, 22.307, 23.55.

[75] 47 C.F.R. §§ 76.71-76.79.

[76] See 47 U.S.C. § 554. In addition, the Commission has proposed adopting EEO requirements for all CMRS licensees, including PCS licensees. Regulatory Treatment of Mobile Services, Further Notice of Proposed Rule Making, GN Docket 93-252, FCC 94-100 (released May 20, 1994).

[77] See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982) (1982 Policy Statement); see also Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978) (1978 Policy Statement).

[78] Because of the role of cable television systems in retransmitting broadcast signals, the Commission has also issued tax certificates in connection with sales of cable systems. See Statement of Policy on Minority Ownership of CATV Systems, FCC 82-524, released December 22, 1982.

[79] Strategies for Advancing Minority Ownership Opportunities in Telecommunications, The Final Report of the Advisory Committee on Alternative Financing for Minority Opportunities in Telecommunications to the Federal Communications Commission, May 1982 (Rivera Committee Report).

capital is a principal problem facing minorities seeking ownership opportunities and further found that this shortage was due to minority inexperience in obtaining financing, financial institution misconceptions about potential minority borrowers, and marketplace structural problems, such as high interest rates and low broadcast industry earnings growth. Among other things, the Rivera Committee suggested educational and outreach programs and expanding the tax certificate program to nonbroadcast properties such as common carrier and land mobile. In response to this recommendation, the FCC submitted draft legislation to Congress proposing to broaden the scope of the Commission's authority to issue tax certificates in connection with the sale or exchange of any type of telecommunications facilities.[80] On March 24, 1983, The Minority Telecommunications Ownership Tax Act of 1983, H.R. 2331, which incorporated the Commission's proposals, was introduced in the House of Representatives.[81]

106. Congress also took steps to address the problem of minority underrepresentation in communications. In 1982, it mandated the grant of a "significant preference" to minority applicants participating in lotteries for spectrum-based services. 47 U.S.C. § 309(i)(3)(A). And, in 1988 and each fiscal year thereafter, Congress attached a provision to the FCC appropriations legislation, which precluded the Commission from spending any appropriated funds to examine or change its minority broadcast preference policies.[82]

107. These efforts have met with limited success. The record shows that women and minorities have not gained substantial ownership representation in either the broadcast or non-broadcast telecommunications industries. For example, a 1993 report conducted by the National Telecommunications and Information Administration's (NTIA) Minority Telecommunications Development Program shows that, as of August 1993, only 2.7 percent of commercial broadcast stations were owned by minorities. Another study commissioned by the Commerce Department's Minority Business Development Agency in 1991 found that only one half of one percent of the telecommunications firms in the country were minority owned. The study also identified only 15 minority cable operators and 11 minority firms engaged in the delivery of cellular, specialized mobile radio, radio paging or messaging services in the

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[80] See Federal Communications Draft Legislation Revising Section 1071 of the Internal Revenue Code of 1954 (January 17, 1983).

[81] The Minority Telecommunications Ownership Tax Act of 1983, H.R. 2331, 98th Congress, 1st Sess., March 24, 1983.

[82] See Continuing Appropriations Act for Fiscal Year 1988, Pub. L. 100-102, 101 Stat. 1329-31; Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1994, Pub. L. 103-121, 107 Stat. 1167.

United States.[83] And, according to the last available U.S. Census, only 24 percent of the communications firms in the country were owned by women, and these women-owned firms generated only approximately 8.7 percent of the revenues earned by communications companies.[84] When companies without paid employees are removed from the equation, firms with women owners represent only 14.5 percent of the communications companies in the country.[85] One result of these low numbers is that there are very few minority or women-owned businesses that bring experience or infrastructure to PCS. They thus face and additional barrier relative to many existing service providers.

108. Small businesses also have not become major participants in the telecommunications industry. For instance, one commenter asserts that ten large companies -- six Regional Bell Operating Companies (RBOCs), AirTouch (formerly owned by Pacific Telesis),McCaw, GTE and Sprint -- control nearly 86 percent of the cellular industry. This commenter further contends that nine of these ten companies control 95 percent of the cellular licenses and population in the 50 BTAs that have one million or more people.[86]

109. Congress directed the Commission to ensure that, together with other designated entities, rural telephone companies have the opportunity to participate in the provision of PCS. Rural areas, because of their more dispersed populations, tend to be less profitable to serve than more densely populated urban areas. Therefore, service to these areas may not be a priority for many PCS licensees. Rural telephone companies, however, are well positioned because of their existing infrastructure to serve these areas profitably. We, therefore, have adopted special provisions to encourage their participation, increasing the likelihood of rapid introduction of service to rural areas.

110. In the new auction law, Congress directed the Commission to remedy this

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[83] See Testimony of Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, before the House Minority Enterprise Subcommittee, May 20, 1994. In his testimony at this same hearing, FCC Chairman Reed Hundt cited some of these statistics and noted that in light of this serious underrepresentation, there remains "a fundamental obligation for both Congress and the FCC to examine new and creative ways to ensure minority opportunity." Testimony of Reed E. Hundt, Chairman, Federal Communications Commission, before the House Minority Enterprise Subcommittee, May 20, 1994.

[84] See Women-Owned Businesses, 1987 Economic Censuses, U.S. Department of Commerce, issued August 1990, at 7, 147. The census data includes partnerships, and subchapter S corporations. We have no statistics regarding women representation among owners of larger communications companies.

[85] Id.

[86] Ex parte filing of DCR Communications, May 31, 1994.

serious imbalance in the participation by certain groups, especially minorities and women. The record indicates that, in the absence of meaningful efforts to assist designated entities, there would be good reason to think that participation by these groups, particularly businesses owned by women and minorities, would continue to be severely limited. Indeed, the auction law itself envisions a process that requires payment of funds to acquire an initial license, unlike existing licensing methods such as comparative hearings or lotteries. It is therefore possible that participation by those with limited access to capital could be further diminished by operation of the statute, absent affirmative provisions to create competitive opportunity for designated entities. The measures we adopt in this Fifth Report and Order thus will carry out Congress's directive to provide meaningful opportunities for small entities, rural telephone companies, and businesses owned by women and minorities to provide broadband PCS services. The rules also are expressly designed to address the funding problems that face these groups and that are their principal barriers to entry.

111. We also intend that designated entities who win licenses have the opportunity to become strong competitors in this service. While the new broadband PCS service presents tremendous opportunities for designated entities to participate in the provision of the next generation of innovative wireless mobile telecommunications services, it is expected to be a highly competitive service, and the estimated costs of acquiring a license and constructing facilities are substantial. In the Broadband PCS Reconsideration Order, which was adopted June 9, 1994, we took specific steps to assist designated entities to become viable competitors in the provision of broadband PCS. For example, we modified the PCS spectrum allocation plan by shifting all channels blocks to a contiguous lower segment of the "emerging technologies band" in part to bolster the ability of designated entities to obtain more competitively viable licenses. In addition, we relaxed some of the ownership and attribution rules with respect to cellular operators' participation in PCS to foster investment in designated entity ventures,[87] and we also relaxed the PCS/cellular cross-ownership rule for designated entities with cellular holdings to allow them to further expand their opportunities in broadband PCS.[88] Further, we took steps that will result in lower capital costs for designated entities that obtain PCS licenses, including adoption of a band plan that will reduce the costs of clearing the PCS spectrum of incumbent microwave users as well as relaxing the construction requirements.

112. The measures we establish today to encourage the entry of designated entities also are designed to promote strong, long-term bona fide competitors. For example, we have revised the definition of a small business set forth in the Second Report and Order to include entities with up to $40 million in gross revenues, and we will allow these small businesses to pool their resources and form consortia to bid in the entrepreneurs' blocks. We also adopt rules that allow entrepreneurial businesses, small businesses, and businesses owned by women

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[87] Broadband PCS Reconsideration Order at ¶127.

[88] Id. at ¶125.

and minorities to raise capital by attracting passive equity investors. At the same time, we have designed these rules to ensure that the special provisions adopted for such businesses accrue to the intended beneficiaries.

B. Summary of Special Provisions for Designated Entities

113. As discussed more fully below, many commenters in this proceeding believe that the inability of designated entities to obtain adequate funding has a profoundly adverse effect on the potential for these businesses to bid successfully in auctions against very large, established businesses. Therefore, we take a number of steps in this Order to help address this imbalance.

- We establish two "entrepreneurs' blocks" (frequency blocks C and F) in which large companies (those with $125 million or more in annual gross revenues or $500 million or more in total assets) will be prohibited from bidding.

- Bidding credits will be granted both to small businesses and to businesses owned by women and minorities in the entrepreneurs' blocks to provide them with a better opportunity to compete successfully in broadband PCS auctions.

- Certain winning bidders in frequency blocks C and F will be permitted to pay the license price in installments, and the interest rate and moratorium on principal payments will be adjusted to assist small businesses and women and minority-owned businesses.

- We adopt a tax certificate program for minority and women-owned businesses, which will provide additional assistance in their efforts to attract equity investors.

- Rural telephone companies will be allowed to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas to provide them more flexibility to serve rural subscribers.[89]

- Bidders in the entrepreneurs' blocks will be required to pay an upfront payment of only $0.015 per MHz per pop, in contrast to the $0.02 per MHz per pop required in the other blocks.

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[89] In a Further Notice of Proposed Rule Making in this docket, we will seek comment on whether a partitioning option for small businesses or businesses owned by women or minorities, as suggested by some of the commenters, may be appropriate. In that Further Notice, we also will seek comment or whether the Commission should impose a restriction on the assignment or transfer of control of partitioned licenses by rural telephone companies or other designated entities for some period of time.

114. The following chart highlights the major provisions adopted for businesses bidding in the entrepreneurs' blocks.[90]

	Bidding Credits	Installment Payments	Tax Certificates for Investors
Entrepreneurial Businesses ($40 MM - $125 MM in revenue and less than $500 MM in total assets)	0	Interest only for 1 year; rate equal to 10-year Treasury note plus 2.5%; (for businesses with revenues greater than $75 MM, available only in top 50 markets)	No
Small Businesses (less than $40 MM revenues)	10%	Interest only for 2 years; rate equal to 10-year Treasury note plus 2.5%;	No
Businesses Owned by Minorities and/or Women ($40 MM - $125 MM in revenues)	15%	Interest only for 3 years; rate equal to 10-year Treasury note;	Yes
Small Businesses Owned by Minorities and/or Women (less than $40 MM revenues)	25%	Interest only for 5 years; rate equal to 10-year treasury note;	Yes

C. Summary of Eligibility Requirements and Definitions

1. Entrepreneurs' Blocks and Small Business Eligibility

115. The following points summarize the principal rules regarding eligibility to bid in the entrepreneurs' blocks and to qualify as a small business. In addition, they summarize the attribution rules we will use to assess whether an applicant satisfies the various financial thresholds. More precise details are discussed in the subsections that follow.

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[90] This table is not comprehensive and therefore it does not present all the provisions established for designated entities, especially those available outside the entrepreneurs' blocks.

Financial Caps:

- Entrepreneurs' Blocks: To bid in the entrepreneurs' blocks, the applicant, including attributable investors and affiliates, must cumulatively have less than $125 million in gross revenues and less than $500 million in total assets. No individual attributable investor or affiliate may have $100 million or more in personal net worth.

- Small Business: To qualify for special measures accorded a small business, the applicant, including attributable investors and affiliates, must cumulatively have less than $40 million in gross revenues. No individual attributable investor or affiliate may have $40 million or more in personal net worth.

Attribution Rules:

- Control Group. The gross revenues, total assets and personal net worth of certain investors are not considered so long as the applicant has a "control group" consisting of one or more individuals or entities that control the applicant, hold at least 25 percent of the equity and, for corporations, at least 50.1 percent of the voting stock.

- The gross revenues, total assets and personal net worth of each member of the control group are counted toward the financial caps.

- Other Investors. Where the applicant has a control group, the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds 25 percent or more of the applicant's passive equity (which, for corporations, includes as much as 5 percent of the voting stock).

    - Passive Equity. Passive equity is limited partnership or non-voting stock interests or voting stock interests of 5 percent or less of the issued and outstanding voting stock.

- Option for Minority or Woman-Owned Applicants. If the control group (consisting entirely of women and/or minorities) owns at least 50.1 percent of the equity and, for corporations, at least 50.1 percent of the voting stock, then the gross revenues, total assets and personal net worth of any other investor are not considered unless the investor holds more than 49.9 percent of the applicant's passive equity (which, for corporations, includes as much as 5 percent of the voting stock).

- Affiliates. The gross revenues, assets and personal net worth of outside interests held by the applicant (and the attributable investors in the applicant) are counted toward the financial caps if the applicant (or the attributable investors in the applicant) control or have power to control the outside interests or if the applicant (or the attributable investors in the applicant) is under the control of the outside interests. The financial interests of spouses are also attributed to each other.

2. Definition of Women and/or Minority-Owned Business

116. The points below summarize the two structural options available to firms that wish to qualify for the special provisions adopted for businesses owned by minorities and women. These options will be discussed in more detail in the text that follows.

50.1% Equity Option:

- If women and/or minority principals control the applicant and own at least:
  - 50.1 percent of the equity
  - and 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
  - not more than 49.9 percent of the passive equity (which, for corporations, includes as much as 5 percent of the voting stock).

25% Equity Option:

- If women and/or minority principals control the applicant and own at least:
  - 25 percent of the equity
  - and 50.1 percent of the voting stock, in the case of corporations
- Then any other investor may hold:
  - less than 25 percent of the passive equity (for corporations,any other investor also may hold not more than 5 percent of the voting stock).

117. We also have imposed numerous strict requirements to deter shams and fronts and to prevent abuse of the incentives for designated entities. The Commission intends to enforce vigorously each of these requirements. All licensees in the entrepreneurs' blocks are prohibited from voluntarily assigning or transferring their licenses for three years after grant of the application and for the next two years may assign or transfer licenses only to other entities that satisfy the financial criteria to bid in the entrepreneurs' blocks. Furthermore, a business that seeks to acquire a license from an entity paying in installments during the license period will be required, as a condition of the grant, to pay according to the installment payment terms for which it qualifies, unless they are more favorable in which case the existing terms apply. If the purchaser is not qualified for any installment payment plan, we will require payment of the unpaid balance in full before the sale will be approved. We also adopt rules to ensure that the value of the bidding credit is returned to the government in the event of a transfer of control or assignment of the license to an entity not qualifying for bidding credits or not qualifying for as high a bidding credit as the seller. In addition, we

impose a one-year holding period on licenses received through the benefit of a tax certificate. We will also conduct random audits to ensure that designated entities retain de facto and de jure control. These steps and our eligibility and affiliation rules will help to ensure that the measures we adopt are utilized only by bona fide eligible entities and to deter winning bidders seeking only to make a quick profit on the sale of PCS licenses. Ultimately, we believe that we will best fulfill our statutory mandate by creating powerful incentives for bona fide designated entities to attract the capital necessary to compete both in auctions for broadband PCS and in the provision of service, and by requiring a strict holding period to ensure that the public receives the benefit of this diverse ownership.

D. The Entrepreneurs' Blocks

118. As discussed above, because the auction process itself requires additional expenditures of capital to acquire licenses, this new licensing procedure in many respects holds the potential to erect an additional barrier to entry that had not existed even under the Act's previous licensing methods, comparative hearings and lotteries. As reflected in the House Committee Report, Congress was well aware of that possibility and wanted to ensure that competitive bidding should not exclude smaller entities from obtaining licenses.[91] The inability of small businesses and businesses owned by women and minorities to obtain adequate private financing creates a serious imbalance between these companies and large businesses in their prospects for competing successfully in broadband PCS auctions.

119. In addition, commenters contend that, at the outset, a small PCS business and a large local exchange carrier would value a license very differently. DCR Communications, for example, argues that a local telephone company would have much lower costs of construction and operation through equipment volume discounts, existing billing, accounting, order entry and processing, and customer service systems. Furthermore, DCR contends, the telephone company might decide to use its PCS system simply as an adjunct to a cellular system it owns in a nearby market and market wireless handsets that operate in both frequencies. DCR concludes that the telephone company could justify paying the higher value for the license because it has more ready access to capital.[92]

120. This concern is echoed by a number of commenters. NTIA agrees that capital formation is a major barrier to full participation by small and minority-owned firms, asserting that capital-constrained firms are likely to assign lower values to PCS licenses than other bidders and are therefore less likely to obtain licenses in an open bidding market.[93] Another party, Impulse Telecommunications Corporation, states that "giants" can justify huge bids because they have billions of dollars of capital as well as an existing administrative, billing,

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[91] See H.R. Rep. No. 103-111 at 255.

[92] Ex parte filing of DCR Communications, May 31, 1994.

[93] NTIA Comments at 26.

operating and marketing infrastructure. In addition, Impulse asserts that PCS licenses are likely to hold strategic value for large long distance and local telephone companies, for such purposes as critical wireless access.[94] Similarly, Tri-State Radio Company states that the allocation of substantial amounts of spectrum to services such as broadband PCS has generated extensive industry expectation and speculation. With the financial stakes so high, Tri-State argues that designated entities will have little ability to bid successfully against "communications behemoths with almost unlimited financial resources."[95]

121. We agree that small entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies, particularly large telephone, cellular and cable television companies. If one or more of these big firms targets a market for strategic reasons, there is almost no likelihood that it could be outbid by a small business. In the Notice, we proposed that one means to address such problems would be to set aside specific spectrum blocks in broadband PCS that would be reserved for bidding purposes to the designated entities.[96] In this Order, we have decided to adopt a modification of this proposal, which should greatly enhance the ability of all designated entities to enter auctions and bid successfully for broadband PCS licenses. Specifically, we establish two entrepreneurs' blocks, C and F, in which eligibility to bid is limited to entities that, together with their affiliates and certain investors, have gross revenues of less than $125 million in each of the last two years and total assets of less than $500 million. In addition, we will prohibit an applicant from bidding in these blocks if any one individual investor in the applicant has $100 million or greater in personal net worth. Together with a reduced upfront payment requirement, we believe this proposal will encourage smaller entities to enter the auctions for broadband PCS licenses and will ensure that "entrepreneurial" businesses are granted nearly half of all the broadband PCS licenses being auctioned.

122. NTIA strongly supports this measure, arguing that it "would be the most direct mechanism for preserving opportunities for small companies in an auction environment." According to NTIA, reserving two entrepreneurs' blocks helps significantly in satisfying the congressional directive that competitive bidding not result in an increase in concentration in

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[94] Ex parte filing of Impulse Telecommunications Corporation, May 27, 1994.

[95] Tri-State Comments at 11. See also comments of NAMTEC (designated entities should not have to compete against "more entrenched parties"), National Rural Telecom Association (the only way small entities can have real opportunity is if they do not have to bid against "extremely 'deep pocket' applicants"), The Small Business PCS Association (it will not be possible for designated entities "to compete in an auction against some of the largest companies and wealthiest individuals in the United States"), JMP (without preferences for designated entities, large telecommunications firms will "monopolize" the auctions), Minority PCS Coalition at 6, Telephone Association of Michigan at 9-10, Iowa Network at 9, AWRT at 8, Telephone Electronics at 7-8, Sloan at 2.

[96] Notice at ¶ 121.

the telecommunications industries.[97] Similarly, Columbia PCS contends that establishment of entrepreneurs' blocks "provides a good balance between Congress's clear mandate to provide opportunities for designated entities and avoid undue concentration of PCS licenses on the one hand with the goal of capturing the value of allocated spectrum for the American public on the other."[98]

123. The $125 million gross revenue/$500 million asset caps have the effect of excluding the large companies that would easily be able to outbid designated entities and frustrate Congress's goal of disseminating licenses among a diversity of licensees. At the same time, this restriction does not exclude many firms that, while not large in comparison with other telecommunications companies, nevertheless are likely to have the financial ability to provide sustained competition for the PCS licensees on the MTA blocks. For example, the $125 million gross revenue figure corresponds roughly to the Commission's definition of a Tier 2, or medium-sized, local exchange carrier,[99] and would include virtually all of the independently owned rural telephone companies. Limiting the personal net worth of any individual investor or affiliate of the applicant to $100 million will prevent a very wealthy individual from leveraging his or her personal assets to allow the applicant to circumvent the size limitations of the entrepreneurs' blocks.

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[97] Ex parte filing of NTIA, June 21, 1994.

[98] Ex parte filing of Columbia PCS, June 2, 1994. Columbia PCS further states that this measure would spur investment in designated entities and increase their ability to compete against one another and others. Id.

[99] Local exchange carriers are categorized as Tier 1 and Tier 2 companies by applying the criterion that Sections 32.11(a) and 32.11(e) of the Commission's Rules use to distinguish Class A and Class B companies, respectively. Class A companies are those companies having annual revenues from regulated telecommunications operations of $100 million or more; Class B companies are those companies having annual revenues from regulated telecommunications operations of less than $100 million. The initial classification of a company is determined by its lowest annual operating revenues for the five immediately preceding years. A company's classification is changed when its annual operating revenue exceeds or is under the $100 million mark in each of five consecutive years. The Commission imposes more relaxed regulatory requirements on Tier 2 LECs than on Tier 1 LECs. See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, 2 FCC Rcd 5770, 5772 (1987), Commission Requirements for Cost Support Material to be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, 9 FCC Rcd 1060 n. 3 (Comm. Carr. Bur. 1994); Commission Requirements for Cost Support Material to be Filed with Access Tariffs on March 1, 1985, Public Notice, Mimeo No. 2133 (Comm. Carr. Bur. released Jan. 25, 1985).

124. As noted previously, many commenters asked us to reserve spectrum blocks for bidding only by designated entities. The entrepreneurs' blocks plan adopted herein is similar in concept to the set-aside proposals set forth by the commenters. Therefore, in determining which of the blocks in each market should constitute the entrepreneurs' blocks, we paid close attention to the concerns of those who had advocated set-asides in the first instance. Although the broadband PCS band plan has changed since the Commission first proposed set-asides in the Notice and parties first submitted their proposals in this docket, the general concerns of these parties about the amount of spectrum and geographic territory necessary to compete effectively remain pertinent. Moreover, we adopted the revised broadband PCS band plan in advance of this Order, which afforded interested parties the opportunity to make additional presentations on designated entity incentives in light of the new band plan.

125. A number of commenters approved of the Notice's proposal to set aside one 20 MHz BTA block and one 10 MHz BTA block. The Small Business PCS Association asserted, moreover, that implementation of the set-aside proposal would offer "a major opportunity" for small businesses, that a 20 MHz block is "probably ideal" for development by small entrepreneurs, and that even a 10 MHz block could sustain a viable PCS System.[100] Telepoint makes similar assertions.

126. A considerable number of commenters, however, contended that the Commission's proposal to set aside a 20 MHz block and a 10 MHz block would be inadequate. Telephone Electronics and AWCC asserted, for instance, that a provider operating with only a 10 MHz or 20 MHz license could not offer a full range of PCS services with quality equivalent to the like offerings of a provider operating with a 30 MHz license. Unique and AWCC thus argued that PCS licensees in the set-aside spectrum would consequently be unable to obtain commercial funding on terms as favorable to those available to operators with 30 MHz licenses. Independent Cellular Network maintained that the competitive disadvantages of the proposed set-aside channels, due to their lesser bandwidth, could not be obviated through aggregation, because of the greater transaction costs that would be incurred above those associated with acquisition of a single 30 MHz license.

127. We believe that designating frequency blocks C and F as entrepreneurs' blocks meets the concerns of most of the designated entity commenters. Frequency block C provides 30 MHz of spectrum and, thus, satisfies the concerns of those parties who believe they must have this amount of bandwidth to compete effectively. The 10 MHz block F license, on the other hand, fulfills the needs of other designated entities who argued in favor of smaller

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[100] The Small Business PCS Association stated that a small business operating in a single BTA service region could effectively compete with large companies operating in larger service areas. This is so, it contended, mainly because PCS providers with large service areas would not realize such great economies of scale as many have supposed and because small firms could counter such advantages by forming buying cooperatives. Comments of Small Business PCS Association at 2-3.

blocks. Moreover, since the C and F blocks are adjacent, they can be aggregated efficiently by one or more licensees. This plan also makes available to eligible bidders in the entrepreneurs' blocks 986 licenses, or slightly under 50 percent of all broadband PCS licenses. Finally, it does not foreclose opportunities for other parties. Bidders ineligible for the entrepreneurs' blocks will have the opportunity to bid on 99 30 MHz MTA licenses throughout the country, as well as 986 10 MHz BTA licenses nationwide.

128. Five-Year Holding and Limited Transfer Period In establishing the entrepreneurs' blocks, we recognize the congressionally mandated objective will not be served if parties take advantage of bidding in these blocks and immediately assign or transfer control of the authorizations to other entities. Such a practice could unjustly enrich the auction winners and would undermine the congressional goal of giving designated entities the opportunity to provide spectrum-based services. Therefore, we will prohibit licensees in the entrepreneurs' blocks from voluntarily assigning or transferring control of their licenses for a period of three years from the date of the license grant.[101] And, for the next two years of the license term, we will permit the licensee to assign or transfer control of its authorization only to an entity that satisfies the entrepreneurs' blocks entry criteria.[102] During this five-year period, licensees will continue to be bound by the financial eligibility requirements, as set forth below.[103] In addition, a transferee or assignee who receives a C or F block license during the five-year period will remain subject to the transfer restrictions for the balance of the holding period.[104] The Commission will conduct random pre and post-auction audits to ensure that applicants receiving preferences are in compliance with the FCC's rules.

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[101] We will consider exceptions to this three-year holding period rule on a case-by-case basis in the event of a judicial order decreeing bankruptcy or a judicial foreclosure if the licensee proposes to assign or transfer its authorization to an entity that meets the financial thresholds for bidding in the entrepreneurs' blocks. In addition, we note that a transfer is considered "involuntary" if it is made pursuant to a court decree requiring the sale or transfer of the licensee's stock or assets. Paramount Pictures, Inc., 43 FCC 453 (1949); Cf. William Penn Broadcasting, 16 FCC 2d 1050 (1969).

[102] We note that a licensee assigning its authorization pursuant to this limited transfer period might be subject to the repayment provisions associated with installment payments and bidding credits. See infra ¶¶ 134, 141. We also clarify that rural telephone companies receiving partitioned licenses in the entrepreneurs' blocks are subject to this five-year holding and limited transfer period.

[103] See infra ¶¶ 156-168. In addition, for purposes of the installment payment and bidding credit provisions set forth below, licensees will continue to be bound by the financial eligibility requirements throughout the term of the license.

[104] For example, if a C-block authorization is assigned to an eligible business in year four of the license term, it will be required to hold that license until the original five-year period expires, subject to the same exceptions that applied to the original licensee.

129. Our goals are to create significant opportunities for entrepreneurs, small businesses, and businesses owned by minorities and women to compete in auctions for licenses and attract sufficient capital to build-out those licenses and provide service. We recognize the critical need to attract capital, which requires flexibility. We are very concerned, however, that such flexibility not undermine our more fundamental objective, which is to ensure that designated entities retain de facto and de jure control of their companies at all times. We believe that the five-year holding and limited transfer period, which we have adopted in this Order, will help to promote this objective. Some question remains, however, as to whether a longer holding period (e.g., seven years) would more fully meet this goal.

E. Bidding Credits

130. In the Notice, we indicated that we might use spectrum set-asides for designated entities in the broadband PCS service but did not expressly propose to use bidding credits. For two other services, IVDS and narrowband PCS, however, we did conclude recently that the use of bidding credits in auctions would be an effective tool to ensure that women and minority-owned businesses have opportunities to participate in the provision of those services.[105] On further reflection, and based on the many comments in the record favoring this approach, we believe that bidding credits are necessary to ensure that women and minority-owned businesses and small businesses participate in broadband PCS. Accordingly, we adopt a bidding credit plan for winning bidders in the entrepreneurs' blocks that gives small businesses a 10 percent credit, women and minority-owned businesses a 15 percent credit, and small businesses owned by women and minorities an aggregate credit of 25 percent.

131. At the outset, we note that we are confining the bidding credit option to the entrepreneurs' blocks because, given the extremely capital intensive nature of broadband PCS, we do not think bidding credits in an uninsulated block would have a meaningful effect.[106] Indeed, in ex parte presentations to the Commission, many commenters have indicated that, without spectrum set-asides for broadband PCS, bidding credits would not be sufficient to assist designated entities in outbidding very large entities who are likely to bid for licenses in this service. DCR Communications states, for example, that all of the existing large telecommunications carriers can justify much larger payments for licenses than could an individual entrepreneur, regardless of a bidder's credit. Therefore, it believes no entrepreneur will win a bid for any PCS market that is desirable to any of the large companies.[107] Many

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[105] See Third Report and Order, FCC 94-98, 9 FCC Rcd ____ (released May 10, 1994); Fourth Report and Order, 9 FCC Rcd 2330 (released May 10, 1994).

[106] We also are concerned that allowing bidding credits in the MTA blocks would increase substantially the incentive for businesses to engage in shams and fronts.

[107] Ex parte filing of DCR, May 31, 1994, at 4-5.

other commenters echo this concern.[108] Some state that, if bidding credits alone are used, extraordinarily large credits, even on the order of 50 percent or more, would be ineffective.[109] As described above, in order to afford designated entities a realistic opportunity to obtain licenses in the broadband PCS service, we have taken measures to exclude very large businesses from bidding for licenses in the C and F blocks. These measures will enhance the value of the bidding credits for small businesses and businesses owned by minorities and women. In this context, we believe that bidding credits will have a significant effect on the ability of small businesses and businesses owned by women and minorities to participate successfully in auctions for licenses in these blocks.

132. As explained above, the capital access problems faced by small firms and women and minority-owned firms make special provisions like bidding credits appropriate for these designated entities in broadband PCS.[110] In effect, the bidding credit will function as a discount on the bid price a firm will actually have to pay to obtain a license and, thus, will address directly the financing obstacles encountered by these entities. Moreover, as noted previously, women and minorities face discrimination in lending and other barriers to entry not encountered by other firms, including other designated entities. Therefore, as one of the measures designed to counter these increased capital formation difficulties, we will provide them with a slightly higher bidding credit than that granted to small businesses. Thus, women and minorities will receive a 15 percent payment discount that is applied against the amounts they bid on licenses. Absent such measures targeted specifically to women and minorities, it would be virtually impossible to assure that these groups achieve any meaningful measure of opportunity for actual participation in the provision of broadband PCS. Similarly, it is reasonable to assume that small firms owned by women and minorities suffer the problems endemic to both groups and that a cumulative bidding credit of 25 percent is therefore appropriate. We believe that these measures will help women and minorities to attract the capital necessary for obtaining a license and constructing and operating a broadband PCS system, consistent with the intent of Congress.

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[108] See ex parte filings of DigiVox Corporation, May 31, 1994, at 3 (the use of bidding credits to the exclusion of frequency set-asides will not fulfill the objectives of Section 309(j)), Communications International Wireless Corp., May 27, 1994, at 1 (bidding credits alone cannot level the playing field between designated entities and members of the Fortune 100 companies), CWCC, May 27, 1994, at 2 (bidding credits alone cannot level the playing field for designated entities).

[109] Ex parte filings of AWCC, May 26, 1994 at 2, Columbia PCS, June 2, 1994 at 2.

[110] Although we did not grant bidding credits to small businesses in the narrowband PCS or IVDS services, we believe that, given the exponentially greater expense likely to be incurred in acquiring broadband PCS licenses and construct the systems, bidding credits are a proper means to ensure that these firms have the opportunity to participate in this service. We note that for narrowband PCS and IVDS, the cost of license acquisition and implementation of service is anticipated to be considerably more modest.

133. The definition of a minority or women-owned firm and of a small business are set forth below.[111] To receive a 10 percent bidding credit, a small business must satisfy a gross revenue test. As explained more fully below in the small business definition section, a consortium consisting entirely of small businesses also is eligible for a 10 percent bidding credit even if the combined gross revenues of the consortium exceed the small business gross revenues threshold. In addition, a small business that is owned by women and minorities must satisfy the definition of a business owned by minorities and women as well as the small business definition to receive a 25 percent bidding credit. Finally, a consortium of small firms owned by women and/or minorities is eligible for a 25 percent bidding credit, provided that each member of the consortium meets the definition of a small business and a minority and/or women-owned firm.

134. Unjust Enrichment Applicable to Bidding Credits To ensure that bidding credits benefit the parties to whom they are directed, we adopt strict repayment penalties. If, within the original term, a licensee applies to assign or transfer control of a license to an entity that is not eligible for as a high a level of bidding credit, then the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify must be paid to the U.S. Treasury as a condition of approval of the transfer. For example, an assignment of a license from a small minority-owned firm to a women-owned firm with revenues greater than $40 million would require repayment of 10 percent of the original bid price (25 percent less 15 percent) to the Treasury. A sale to an entity that would not qualify for bidding credits will entail full payment of the bidding credit as a condition of transfer. Small businesses also will be bound by the financial eligibility rules during the entire license term as set forth below. Thus, if after licensing an investor purchases an "attributable" interest in the business and, as a result, the gross revenues of the firm exceed the $40 million small business cap, this repayment provision will apply.[112] These repayment provisions apply throughout the original term of the license to help promote the long-term holding of licenses by those parties receiving bidding credits.

F. Installment Payments

135. A significant barrier for most businesses small enough to qualify to bid in the entrepreneurs' blocks will be access to adequate private financing to ensure their ability to compete against larger firms in the PCS marketplace.[113] In the Second Report and Order, we concluded that installment payments are an effective means to address the inability of small businesses to obtain financing and will enable these entities to compete more effectively for

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[111] See infra ¶¶ 172-192.

[112] See infra ¶¶ 158-168, for a discussion of which investor interests are "attributable" for purposes of calculating the gross revenues caps.

[113] See e.g., comments of SBA Chief Counsel of Advocacy at 6, 20-21, NTIA at 27; SBAC Report at 2 (September 15, 1993).

the auctioned spectrum. We also determined that small businesses eligible for installment payments would only be required to pay half of the down payment (10 percent of the winning bid, as opposed to 20 percent) five days after the auction closes, with the remaining 10 percent payment deferred until five days after grant of the license. Finally, we indicated that installment payments should be made available to small businesses at an interest rate equal to the rate for U.S. Treasury obligations. See Second Report and Order at ¶¶ 236-240.

136. In light of the expected substantial capital required to acquire and construct broadband PCS licenses, we conclude that installment payments are an appropriate measure for most businesses that obtain broadband PCS licenses in the entrepreneurs' blocks. By allowing payment in installments, the government is in effect extending credit to licensees, thus reducing the amount of private financing needed prior to and after the auction. Such low cost government financing will promote long-term participation by these businesses, which, because of their smaller size, lack access to sufficient capital to compete effectively with larger PCS licensees. Under the rules we adopt today, installment payments are available to smaller entities that do not technically qualify as small businesses for purposes of other measures we have adopted, such as bidding credits. We believe, however, that, given the enormous costs of broadband PCS and the likelihood of very large participants in the other blocks, this option is fully consistent with the congressional intent in enacting Section 309(j)(4)(A) to avoid a competitive bidding program that has the effect of favoring incumbent providers of other communications services, with established revenue streams, over smaller entities.[114]

137. Under the plan we adopt here, all licensees that satisfy the gross revenues , total assets and personal net worth criteria to bid in the entrepreneurs' blocks will be allowed to pay in installments for licenses granted in those blocks in the 50 largest BTAs. In the smaller BTAs, however, only businesses owned by women and minorities and those licensees with less than $75 million in gross revenues will be able to use installment payments.[115] This distinction is based on the expected lower costs to acquire licenses and construct systems in the smaller BTAs. Thus, with the exception of companies owned by women or minorities, which face additional problems accessing capital, we do not think that a firm with gross revenues exceeding $75 million will require government financing to be competitive in the

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[114] See H.R. Rep. No. 103-111 at 255 (Commission has the authority to design alternative payment schedules in order that the auction process does not inadvertently favor only those with "deep pockets" over new or small companies).

[115] We will apply the same $500 million total assets and $100 million personal net worth standards for purposes of determining eligibility for installment payments in all BTAs. The attribution rules set forth with regard to eligibility to bid in the entrepreneurs' blocks also will apply in all BTAs. See infra ¶¶ 158-168.

smaller BTAs.[116]

138. The installment payment option will enable qualified businesses to pay their winning bid over time. These businesses must make the applicable upfront payment in full before the auction, but are required to make a post-auction down payment equaling only ten percent of their winning bids, half of which will be due five business days after the auction closes. Payment of the other half of the down payment will be deferred until five business days after the license is granted. In general, the remaining 90 percent of the auction price will be paid in installments with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. Under this general rule, only payments of interest will be due for the first year with principal and interest payments amortized over the remaining nine years of the license. Timely payment of all installments will be a condition of the license grant and failure to make such timely payment will be grounds for revocation of the license.[117]

139. Enhanced Installment Payments As explained previously, small businesses and businesses owned by minorities and women face capital access difficulties not encountered by other firms and, thus, require special measures to ensure their opportunity to participate in broadband PCS. Accordingly, we will provide an "enhanced" installment payment plan for these entities. Pursuant to this enhanced installment payment plan, small businesses (as defined below) who win licenses in the entrepreneurs' blocks will be required to pay interest only for the first two years of the license term at the same interest rate as set forth in the general rule. Businesses owned by women and/or minorities will be able to make interest-only payments for three years. Interest will accrue at the Treasury note rate without the additional 2.5 percent.[118] And, finally, businesses that are both small and owned by women and/or minorities will be required to pay only interest for five years. Interest will accrue at the Treasury note rate.

140. These enhanced installment payments are narrowly tailored to the needs of the various designated entities, as reflected in the record in this proceeding. We believe that varying the moratorium on principal in the early years of the loan and varying the interest rate based on these needs will allow small businesses and companies owned by women and/or

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[116] We note that a consortium of small businesses is eligible for installment payments in any market so long as each member of the consortium satisfies the definition of a small business, as set forth in Section VII.J.2, infra.

[117] As described in the Second Report and Order, the Commission may, on a case-by-case basis, permit a three to six month grace period within which a licensee may seek a restructuring of the payment plan.

[118] To be eligible for these "enhanced" installment payments, a firm must satisfy either of the two alternative definitions of a woman or minority-owned business, as set forth in ¶¶ 181-192, infra, as well as the applicable financial caps.

minorities to bid higher in auctions, thereby increasing their chances for obtaining licenses. In addition, it will allow them to concentrate their resources on infrastructure build-out and, therefore, it will increase the likelihood that they become viable PCS competitors.

141. Unjust Enrichment Applicable to Installment Payments To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, we will use the unjust enrichment provisions adopted in the Second Report and Order applicable to installment payments. Specifically, if a licensee that was awarded installment payments seeks to assign or transfer control of its license to an entity not meeting the applicable eligibility standards set out above during the term of the license, we will require payment of the remaining principal and any interest accrued through the date of assignment as a condition of the license assignment or transfer. See Second Report and Order at ¶ 263; 47 C.F.R. § 1.2111(c). Moreover, if an entity seeks to assign or transfer control of a license to an entity that does not qualify for as favorable an installment payment plan, the installment payment plan, if any, for which the acquiring entity qualifies will become effective immediately upon transfer. Thus, a higher interest rate and earlier payment of principal may begin to be applied. For example, a transfer of a license in the fourth year after license grant from a small minority-owned firm to a small non-minority owned firm would require that the firm begin principal payments and the balance would begin accruing interest at a rate 2.5 percent above the rate that had been in effect.[119] Finally, if an investor subsequently purchases an "attributable" interest in the businesses and, as a result, the gross revenues or total assets of the business exceed the applicable financial caps, this unjust enrichment provision will also apply.[120]

G. Tax Certificates

142. Congress instructed the Commission to consider the use of tax certificates to help ensure designated entity participation in spectrum-based services. See 47 U.S.C. § 309(j)(4)(D). In the Second Report and Order we observed that tax certificates could be useful as a means of attracting investors to designated entity enterprises and to encourage licensees to assign or transfer control of licenses to designated entities in post-auction transactions. We stated further that we would examine the feasibility of using this measure in

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[119] We recognize that because of the five-year holding and limited transfer requirements in the entrepreneurs' blocks, these unjust enrichment provisions have limited applicability during the first five years of the license term. Nevertheless, there are some situations in which licensees are permitted to assign or transfer their licenses during this period and the provisions would then apply if the buyer would not have been qualified for installment payments or as favorable an installment payment plan. Furthermore, the unjust enrichment provisions are applicable for the full ten-year license term.

[120] See infra ¶¶ 158-168, for a discussion of which investor interests are "attributable" for purposes of calculating the gross revenues and total assets thresholds.

subsequent service-specific auction rules. Second Report and Order at ¶ 251.

143. We believe that tax certificates, which allow the recipients to defer capital gains taxes made on sales, are an appropriate tool to assist women and minority-owned businesses to attract start-up capital from non-controlling investors in broadband PCS. As explained above, due to discrimination in private lending markets and other factors, these designated entities face added obstacles in accessing capital. Therefore, in order to ensure that such businesses have a meaningful opportunity to participate in auctions, it is necessary to adopt measures to encourage investment in minority and woman-owned companies. Moreover, because of the severe underrepresentation of women and minorities in telecommunications, we believe that it is appropriate to give PCS licensees the incentive, through the grant of tax certificates, to assign or transfer their authorizations to such entities in post-auction sales. This measure will provide added assurance that minority and women-owned entities have the opportunity to participate in broadband PCS services, as mandated by Congress. Accordingly, we will issue tax certificates to non-controlling initial investors in minority and women-owned broadband PCS applicants (in any frequency block), upon the sale of their non-controlling interests. We will also issue tax certificates to broadband PCS licensees (in any frequency block) who assign or transfer control of their licenses to minority and women-owned entities.

144. We have used tax certificates over the years to encourage broadcast licensees and cable television operators to transfer their stations and systems to minority buyers.[121] We also have granted tax certificates to shareholders in minority-controlled broadcast or cable entities who sell their shares, when such interests were acquired to assist in the financing of the acquisition of the facility.[122] These broadcast and cable tax certificates are issued pursuant to the Internal Revenue Code, 26 U.S.C. § 1071. While Congress' goal in authorizing tax certificates under Section 309(j)(4)(D) of the Act is somewhat different, and focuses on ensuring the opportunity for designated entities to participate in auctions and spectrum-based services, we think that tax certificates will be equally valuable in the broadband PCS context. Issuance of tax certificates to investors in minority and women-owned businesses and licensees that sell to minorities and women will augment the other measures we adopt today to encourage minorities and women to participate in broadband PCS and will increase the ability of these entities to access financing for that purpose.

145. In implementing this program, we will borrow from our existing tax certificate program and grant tax certificates, upon request, that will enable the licensees and investors meeting the criteria outlined here to defer the gain realized upon a sale by: (1) treating it as

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[121] See 1982 Policy Statement; 1978 Policy Statement. We have also employed tax certificates as a means of encouraging fixed microwave operators to relocate from spectrum allocated to emerging technologies. See Third Report and Order and Memorandum Opinion and Order, ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

[122] See 1982 Policy Statement, 92 FCC 2d at 855-58.

an involuntary conversion under 26 U.S.C. § 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property; or both. Tax certificates will be available to initial investors in minority and woman-owned businesses who provide "start-up" financing, which allows these businesses to acquire licenses at auction or in the post-auction market, and those investors who purchase interests within the first year after license issuance, which allows for the stabilization of the designated entities' capital base. The definition of a minority or women-owned entity is set forth below[123] and, with regard to our investor tax certificate policy, the entity in which the investment is made must satisfy that definition at the time of the original investment as well as after the investor's shares are sold. For post-auction market sales, tax certificates will be issued only to licensees who sell to entities that meet that definition. Tax certificates will be granted only upon completion of the sale, although parties may request a declaratory ruling from the Commission regarding the tax certificate consequences of prospective transactions.

146. One-Year Holding Period As with our other tax certificate policies, we are concerned about avoiding "sham" arrangements to obtain tax certificates and, pursuant to Section 309(j)(4)(E), thus adopt measures to prevent abuses. As in our existing tax certificate program,[124] we will impose a one-year holding requirement on the transfer of control or assignment of broadband PCS licenses by women and minority-owned businesses who obtained such licenses through the benefit of tax certificates. We believe that the rapid resale of such licenses at a profit would subvert our goal of ensuring the opportunity to participate by minority or woman-owned businesses. If the buyer itself is a women or minority-owned business, however, our objectives still will be satisfied. Thus, as an exception to the holding requirement, we will permit the assignment or transfer of control of licenses during this period to other qualified minority and women-owned businesses. We note, however, that the assignee or transferee who receives this license before the end of the original one-year holding period will also be subject to a one-year holding requirement, from the date of consummation of the assignment or transfer.

147. Finally, in the Broadband PCS Reconsideration Order, we indicated that we would address in this proceeding proposals for issuing tax certificates to cellular operators who divest their cellular holdings in order to come into compliance with our rules governing cellular operators' participation in broadband PCS. Several commenters argued that tax certificates should be issued to all such companies who divest their holdings.[125] To accomplish the directive in Section 309(j)(4)(D) that minority groups and women are given

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[123] See infra ¶¶ 181-192.

[124] See Amendment of Section 73.3597 of the Commission's Rules, Memorandum Opinion and Order, 99 FCC 2d 971, 974 (1985).

[125] See, e.g., Petitions for Reconsideration of GTE Service Corporation and Comcast Corporation of Second Report and Order in GEN Docket 90-314.

the opportunity to participate in the provision of spectrum-based services, we have decided to issue tax certificates to such cellular companies so long as their cellular interests are divested to businesses owned by minorities and/or women, as defined in this order. In this manner, we can further implement Congress's goal to facilitate the participation of minorities and women in spectrum-based services. We will also impose a one-year holding period requirement on the assignment or transfer of control of cellular licenses obtained by women and minority-owned businesses through the benefit of this tax certificate policy.

H. Provisions for Rural Telephone Companies

148. After the release of the Second Report and Order, rural telephone companies made numerous ex parte presentations concerning how we can best ensure that rural areas are provided broadband PCS. In addition, we have received several petitions for reconsideration of the Second Report and Order that address our definition of rural telephone companies in the generic auction rules. In this Order, we address the treatment of rural telephone companies for purposes of competitive bidding for broadband PCS licenses and address below some of the issues raised in petitions for reconsideration of the Second Report and Order concerning the definition of these entities.

149. In the Broadband PCS Reconsideration Order, we adopted an important measure that will help rural telephone companies become viable providers of PCS services. In response to numerous requests from rural telephone company interests, we increased from 20 percent to 40 percent the cellular attribution threshold for rural telephone companies with non-controlling cellular interests in their areas. See Broadband PCS Reconsideration Order at ¶ 125. This action increases the number of rural telephone companies that will be eligible to hold PCS licenses. In taking this action, we recognized that their existing infrastructure makes rural telephone companies well suited to introduce PCS services rapidly into their service areas and adjacent areas. Thus, this action will help speed service to rural areas, which tend to be less profitable to serve for companies without existing infrastructure than more densely populated urban areas.

150. We suggested in the Second Report and Order that allowing broadband PCS licenses to be geographically partitioned may be a means to permit rural telephone companies to hold licenses to provide service in their telephone service areas.[126] Many rural telephone companies proposed some form of partitioning in their comments, arguing that if they were required to bid on entire BTA or MTA licenses to obtain licenses covering their wireline

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[126] See Second Report and Order at ¶ 243, n. 186. We note that although we stated in n. 186 that we would consider partitioning for rural telephone companies in the reconsideration of the broadband PCS service rules, we have concluded that this issue should be addressed along with other issues concerning designated entities. See Broadband PCS Reconsideration Order at ¶ 83, n. 113. In our deliberations on this issue, we incorporate into this proceeding the record developed in GEN Docket No. 90-314.

service areas, they would be effectively barred from entering the broadband PCS industry. They contend that under a partitioning plan, they would be able to serve areas in which they already provide service, while the remainder of the PCS service area could be served by other providers. Such a plan, they argue, would encourage rural telephone companies to take advantage of existing infrastructure in providing PCS services, thereby speeding service to rural areas.[127] We believe that these proposals have merit, and therefore we now adopt a license partitioning system to provide these designated entities the enhanced opportunity to participate in the provision of broadband PCS and to deploy broadband PCS in their rural service areas rapidly.

151. Our partitioning system will allow rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas. These companies will be permitted to acquire partitioned broadband PCS licenses in either of two ways in any frequency blocks: (1) they may form bidding consortia consisting entirely of rural telephone companies to participate in auctions, and then partition the licenses won among consortia participants, and (2) they may acquire partitioned broadband PCS licenses from other licensees through private negotiation and agreement either before or after the auction. Each rural telephone company member of a consortium will, following the auction, be required to file a long-form application for its respective, mutually agreed-upon geographic area. If rural telephone company consortia are formed to bid on licenses in the entrepreneurs' blocks, the eligibility rules for those blocks will apply (i.e., the cumulative gross revenues and assets of the consortium members may not exceed the financial caps for eligibility in these blocks).[128] We will require that partitioned areas conform to established geopolitical boundaries (such as county lines) and that each area include all portions of the wireline service area of the rural telephone company applicant that lies within the PCS service area. In addition, if a rural telephone company receives a partitioned license post-auction from another PCS licensee, the partitioned area must be reasonably related to the rural telephone company's wireline service area that lies within the PCS service area.[129] We recognize that rural telephone companies will require some flexibility in fashioning the areas in which they will receive partitioned licenses, so we do not adopt a strict rule concerning the reasonableness of the partitioned area. Generally, we will presume as reasonable a partitioned area that contains no more than twice the population of that portion of a rural telephone

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[127] See, e.g., comments of GVNW at 2-4, Rural Cellular Association at 16, U.S. Intelco at 16.

[128] As discussed below, we will permit a consortium consisting entirely of small businesses to exceed the entrepreneurs' blocks financial thresholds. See infra ¶¶ 179-180. Therefore, if each member of a consortium of rural telephone companies also satisfies the definition of a small business, we will allow the consortium to bid in the entrepreneurs' blocks even if it exceeds the gross revenues and total assets caps.

[129] This provision will not apply when rural telephone companies form consortia only among themselves and then partition the license area. In this circumstance, one or more partitioned areas may have to be larger in order for the entire PCS service area to be served.

company's wireline service area that lies within the PCS service area. Each licensee in each partitioned area will be responsible for meeting the build-out requirements in its area.

152. Allowing partitioning of rural areas served by rural telephone companies provides a viable opportunity for many of these designated entities who desire to offer PCS to their customers as a complement to their local telephone services. For example, rural telephone companies who cannot afford or do not desire to bid for or construct PCS systems for an entire BTA can thus acquire licenses in areas they wish to serve or form bidding consortia and partition the entire BTA among themselves. We believe that rural partitioning is an efficient method of getting a license in the hands of an entity that will provide rapid service to rural areas.

153. We have decided not to adopt any other auction-related measures specifically for rural telephone companies in this Order. We believe that the partitioning plan we are adopting will provide rural telephone companies with substantial capabilities to acquire licenses to provide broadband PCS in their rural telephone service areas, consistent with our statutory mandate. In addition, our eligibility criteria for bidding in the entrepreneurs' blocks, discussed below, will permit virtually all telephone companies whose service areas are predominantly rural to bid on licenses in frequency blocks C and F without competition from the large telephone companies and other deep-pocketed bidders. Thus, virtually all rural telephone companies will be able to bid for broadband PCS licenses and defer payment in accordance with the installment payment plans we are adopting for the entrepreneurs' blocks. We also note that if a rural telephone company meets the definition of a small business or a business owned by minorities and/or women, it would enjoy a bidding credit and "enhanced" installment payments applicable to those groups when bidding on licenses in these blocks. We do not think that any other measures are necessary in order to satisfy the statute's directive that we ensure that rural telephone companies have the opportunity to participate in the provision of spectrum-based services, and to satisfy our goals to ensure that PCS is provided to all areas of the country including rural areas.

I. Upfront Payments

154. Upfront payment requirements are designed to ensure that bidders are qualified and serious and to provide the Commission with a source of funds in the event that it becomes necessary to assess default or bid withdrawal penalties.[130] The upfront payment ensures that bids during the course of the auction are bona fide and convey information about the value of the underlying licenses. Our standard upfront payment for broadband PCS is $0.02 per MHz per pop, which is equivalent to roughly six percent of the license value, based on an estimate in a Congressional Budget Office report of the total value of the auctionable

[130] Second Report and Order, ¶¶ 169-80.

spectrum.[131] A number of commenters assert that the Commission could enhance the opportunity of designated entities to participate in competitive bidding by reducing the required upfront payment for those applicants.[132] We agree that the $0.02 per MHz per pop upfront payment requirement might impose a barrier for smaller entities wishing to participate in the auctions. Moreover, we note that most bidders in the entrepreneurs' blocks will be entitled to pay for their licenses in installments, which requires a down payment of only five percent of the winning bid. We are concerned that requiring an upfront payment that may be larger than the down payment that the winning bidder is required to tender could discourage auction participation.

155. For these reasons, we will reduce the upfront payment requirement to $0.015 per MHz per pop for bidders in the entrepreneurs' blocks. This 25 percent discount should facilitate auction participation by capital-constrained companies and permit them to conserve resources for infrastructure development after winning a license. Moreover, since the upfront payment is still substantial, ranging from slightly below $20,000 for a 30 MHz license in the smallest BTAs to more than $10 million for the New York BTA, insincere bidding will be discouraged and the Commission will have access to funds if it must collect default or bid withdrawal penalty payments.

J. Definitions and Eligibility

1. Eligibility to Bid in the Entrepreneurs' Blocks

156. As noted previously, eligibility to bid in the two entrepreneurs' blocks, C and F, is limited to companies that, together with their affiliates and investors, had gross revenues of less than $125 million in each of the last two years and have total assets of less than $500 million at the time their short form applications are filed. In addition, we will prohibit an applicant from bidding in these blocks if any one individual investor or principal in the applicant has $100 million or greater in personal net worth at the short form application filing date.

157. In determining whether an applicant satisfies these financial thresholds, we will count the gross revenues and total assets of the applicant as well as those of its investors with "attributable" interests. The subsection that follows discusses what interests are attributable for these purposes. In addition, it sets forth exceptions to these attribution rules for minority and women-owned applicants and for publicly-traded companies.

a. Attribution Rules for the Entrepreneurs' Blocks

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[131] Id. at ¶ 177.

[132] See e.g., comments of AWCC at 31-32, Minnesota Equal Access at 2, NAMTEC at 20, Rural Cellular Corp. at 2, U.S. Intelco at 22-23.

158. Qualified "Entrepreneurs". As a general rule, the gross revenues and total assets of all investors in, and affiliates of, an applicant are counted on a cumulative, fully-diluted basis for purposes of determining whether the $125 million/$500 million thresholds have been exceeded, and on an individual basis regarding the $100 personal net worth standard.[133] There are two exceptions to this rule, however. First, applicants that meet the definition of a small business may, as discussed below, form consortia of small businesses that, on a aggregate basis, exceed the gross revenue/total asset caps. Second, the gross revenues, total assets, personal net worth, and affiliations of any investor in the applicant are not considered so long as the investor holds less than 25 percent of the applicant's passive equity. For corporations, we shall use the term passive equity investors to mean investors who hold only non-voting stock or de minimis amounts of voting stock that include no more than five percent of the voting interests. Where different classes of stock are held, however, the total amount of equity must still be less than 25 percent to meet this requirement. For partnerships, the term means limited partnership interests that do not have the power to exercise control of the entity.[134] The passive investor exception will be available, however, only so long as the applicant remains under the control of one or more entities or individuals (defined as the "control group") and the control group holds at least 25 percent of the applicant's equity and, in the case of corporate applicants, at least 50.1 percent of the voting stock.[135] In the case of partnership applicants, the control group must hold all the general partnership interests. Winning bidders are required to identify on their long-form applications the identity of the members of this control group and the means of ensuring control (such as a voting trust agreement). The gross revenues, total assets and personal net worth (if applicable) of each member of the control group and each member's affiliates will be counted toward the $125 million gross revenues/$500 million total assets thresholds or the individual $100 million personal net worth standard, regardless of the size of the member's total interest in the applicant.

159. The attribution levels we have selected here are intended to balance the competing considerations that apply in this particular context and may differ from those we have used in other circumstances. As a general matter, the 25 percent limitation on equity

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[133] By "fully-diluted," we mean that agreements such as stock options, warrants and convertible debentures will generally be considered to have a present effect and will be treated as if the rights thereunder already have been fully exercised.

[134] Applicants must be prepared to demonstrate that the limited partners do not have influence over the affairs of the applicant that is inconsistent with their roles ar passive investors. For purposes of our rules, we presume that any general partner has the power to control a partnership. Therefore, each general partner in a partnership will be considered part of the partnership's control group.

[135] So long as the applicant remains under the de jure and de facto control of the control group, we shall not bar passive investors from entering into management agreements with applicants.

investment interests will serve as a safeguard that the very large entities who are excluded from bidding in these blocks do not, through their investments in qualified firms, circumvent the gross revenue/total asset caps. At the same time, it will afford qualified bidders a reasonable measure of flexibility in obtaining needed financing from other entities, while ensuring that such entities do not acquire controlling interests in the eligible bidders.[136] Similarly, the five percent threshold for attributing revenues of investors with voting stock in corporate applicants is designed to keep ineligible parties from exerting undue control over eligible firms.[137] For all of these reasons, we also will attribute the gross revenues and total assets of entities, or the personal net worth of individuals, that otherwise constitute "affiliates" of the applicant.[138]

160. Qualified Woman and Minority-Owned "Entrepreneurs". As discussed above, the record demonstrates that women and minorities have especially acute problems in obtaining financing, due in part to discriminatory lending practices by private financial institutions. To address these special problems and to afford women and minority-owned businesses more flexibility in attracting financing, it is necessary to provide these entities with an alternative, somewhat more relaxed option regarding the attribution of revenues of passive investors. Under this alternative standard, we will not attribute to the applicant the gross revenues, assets, or net worth of any single investor in a minority or woman-owned applicant unless it holds more than 49.9 percent of the passive equity (which is defined to include as much as five percent of a corporation's voting stock). To guard against abuses, however, the control group of applicants choosing this option would have to own at least 50.1 percent of the applicant's equity, as well as retain control and hold at least 50.1 percent of the voting stock.[139] As discussed above with regard to general eligibility to bid in the entrepreneurs' blocks, winning bidders must identify on their long-form applications a control group (this time consisting entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and/or women) and the gross revenues and net worth of each member of the control group and each member's affiliates will be counted toward the $125 million gross revenue/$500 million total asset thresholds or the individual $100 million personal net worth limitation, regardless of the size of the member's total interest in the applicant.

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[136] Several commenters have suggested that we establish an attribution threshold for investors in a broadband PCS applicant. See, e.g., ex parte filings of Columbia PCS, June 2, 1994 (20 percent threshold), and Impulse Telecommunications Corporation, May 27, 1994 (10 percent threshold).

[137] In the event that the five percent voting stock limitation proves to be overly restrictive, we may consider whether a higher threshold (e.g., 15 percent) would be sufficient to meet our concerns about undue control from large investors.

[138] The definition of an "affiliate" is set forth in subsection 5, infra.

[139] As noted previously, the control group of a partnership applicant must hold all of the general partnership interests.

161. Relaxing the attribution standard somewhat in determining eligibility of women and minority-owned companies to bid for licenses on frequency blocks C and F directly addresses what most commenters have stated to be the biggest obstacle to entry for these designated entities: obtaining adequate financing. By this measure, women and minorities who are eligible to bid in these blocks (i.e., who otherwise meet the $125 million gross revenues/$500 million total asset standard) will be required to maintain control of their companies and, at the same time, will have flexibility to attract significant infusions of capital from a single investor. The requirement that the minority and women principals hold 50.1 percent of the company's equity mitigates substantially the danger that a well-capitalized investor with a substantial ownership stake will be able to assume de facto control of the applicant. Because this step gives large companies, who are otherwise ineligible to bid in the entrepreneurs' blocks, a significant incentive to "partner" with minority and women-owned firms, it will enhance the likelihood that these designated entities will be both successful in the auctions and become viable, long-term competitors in the PCS industry.

162. Of course, women and minority-owned firms, like any other applicant for a C or F block license, may sell a larger portion of their companies' equity, provided that they also abide by the general eligibility requirements to bid in the entrepreneurs' blocks. Specifically, the gross revenues, total assets and net worth of all investors holding 25 percent or more of the company's passive equity (as defined to include 5 percent or more of the voting stock) will be attributed toward the $125 million/$500 million caps or the $100 million personal net worth standard. In this event, the control group will be required to hold at least 25 percent of the company's equity and 50.1 percent of its voting stock.

163. Qualified Publicly-Traded "Entrepreneurs". We also believe that these attribution rules may impose a particular hardship on publicly traded companies, which have little control over the ownership of their stock, and whose voting stock typically is widely held. Therefore, for purposes of determining eligibility to bid in the entrepreneurs' blocks, we adopt an exception from these rules for publicly traded companies.[140] Specifically, we will not attribute the gross revenues or total assets of a shareholder in a publicly traded company that owns up to 25 percent of the corporation's equity, even if that equity is represented by up to 15 percent of the voting stock. To take advantage of this exception, however, the eligible control group of the applicant still must control the corporation, hold at least 50.1 percent of the voting stock, and at least 25 percent of the company's equity.[141]

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[140] "Publicly-traded company" shall mean a business entity organized under the laws of the United States whose shares, debt or other ownership interests are traded on an organized securities exchange within the United States.

[141] We note that this exception for publicly held companies is only applicable for purposes of assessing eligibility to bid in the entrepreneurs' blocks and for the general installment payment option. In the event that a publicly traded company can demonstrate that the 15 percent threshold would impose a serious hardship, the Commission would entertain a

164. De Facto Control Issues. We shall codify in our rules a provision explaining more explicitly the term "control," so that applicants will have clear guidance concerning the requirement that a control group maintains de facto as well as de jure control of the firms that are eligible for special treatment under the rules for broadband PCS. For this purpose, we shall borrow from certain SBA rules that are used to determine when a firm should be deemed an affiliate of a small business.[142] These SBA rules, which are codified in 13 CFR 121.401, provide several specific examples of instances in which an entity might have control of a firm even though the entity has less than 50 percent of the voting stock of a concern, and thus provide a useful model for our rules. Through reference to circumstances such as those described in the SBA rules, our rules will expressly alert designated entities that control of the applicant through ownership of 50.1 percent of the firm's voting interests may be insufficient to ensure de facto control of the applicant if, for example, the voting stock of the eligible control group is widely dispersed. In those and other circumstances, ownership of 50.1 percent of the voting stock may be insufficient to assure control of the applicant. Of course, apart from these structural issues relative to control, eligible entities must not, during the license term, abandon control of their licenses through any other mechanism. As we stated in the Second Report and Order, designated entities must be prepared to demonstrate that they are in control of the enterprise.[143]

165. Financial Benefits. To ensure that the control group has a substantial financial stake in the venture, we shall adopt certain additional requirements, also borrowed from SBA rules. As noted previously, we shall require that at least 50.1 percent of each class of voting stock and at least 25 percent (or 50.1 percent for the alternative option for minority and women-owned businesses) of the aggregate of all outstanding shares of stock to be unconditionally owned by the control group members. In addition, 50.1 percent of the annual distribution of dividends paid on the voting stock of a corporate applicant concern must be paid to these members. Also, in the event stock is sold, the control group members must be

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request to raise the threshold in individual cases. Companies seeking such relief must also demonstrate that raising the threshold would not contravene the Commission's control objectives, as described in this Order. We do not believe, however, that publicly traded corporations with individual shareholders owning up to 15 percent active equity require additional special provisions such as bidding credits, "enhanced" installment payments, or tax certificates to overcome capital access problems. Thus, we will not apply this exception with regard to the small business definition or the definition of a woman or minority-owned business.

[142] As discussed below, these SBA affiliation rules also will be used as a basis for our own rules defining "affiliates" for purposes of determining whether particular entities meet the financial thresholds for bidding in the entrepreneurs' blocks or for qualifying as a small business.

[143] Second Report and Order at ¶ 278, citing Intermountain Microwave, 24 Rad. Reg. 983, 984 (1963).

entitled to receive 100 percent of the value of each share of stock in his or her possession. Similarly, in the event of dissolution or liquidation of the corporation, the control group members must be entitled to receive at least 25 percent (or 50.1 percent, as the case may be) of the retained earnings of the concern and 100 percent of the value of each share of the stock in his or her possession, subject, of course, to any applicable laws requiring that debt be paid before distribution of equity.

166. Partnerships and other non-corporate entities will be subject to similar requirements. Indicia of ownership that we will consider in non-corporate cases include (but are not limited to) (a) the right to share in the profits and losses, and receive assets or liabilities upon liquidation, of the enterprise pro rata in relationship to the designated entity's ownership percentage and (b) the absence of opportunities to dilute the interest of the designated entity (through capital calls or otherwise) in the venture. As with corporations, our concern is ensuring that the economic opportunities and benefits provided through these rules flow to designated entities, as Congress directed.

167. Application of the Five-Year Holding Rule. Finally, we explain how these attribution rules apply with regard to the five-year holding and limited transfer period for C and F block licensees. During this five-year period, a C or F block licensee must not sell more than 25 percent of its passive equity to a single investor if the resulting attribution of that investor's gross revenues or total assets would bring the company over the $125 million gross revenues/$500 million total assets thresholds, or if that investor's personal net worth exceeds the $100 million personal net worth cap. Similarly, while individual members of the control group may change (if it would not result in a transfer of control of the company), the control group must maintain control and at least 25 percent of the equity and 50.1 percent of the voting stock.[144] A company will be permitted to grow beyond these gross revenues/total assets caps, however, through equity investment by non-attributable (i.e. passive) investors, debt financing, revenue from operations, business development or expanded service.[145]

168. Abuses. As stated above, we intend by these attribution rules to ensure that bidders and recipients of these licenses in the entrepreneurs' blocks are bona fide in their eligibility, and we intend to conduct random audits both before the auctions and during the 10-year initial license period to ensure that our rules are complied with in letter and spirit. If we find that large firms or individuals exceeding our personal net worth caps are able to assume control of licensees in the entrepreneurs' blocks or otherwise circumvent our rules, we will not hesitate to force divestiture of such improper interests or, in appropriate cases, issue

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[144] A minority or woman-owned company must continue to adhere to the attribution rules applicable to it, set out above.

[145] These rules will continue to apply in this manner throughout the license term with regard to a firm's continuing eligibility for installment payments, "enhanced" installment payments and bidding credits.

forfeitures or revoke licenses. In this regard, we reiterate that it is our intent, and the intent of Congress, that women, minorities and small businesses be given an opportunity to participate in broadband PCS services, not merely as fronts for other entities, but as active entrepreneurs.

b. Limit on Licenses Awarded in Entrepreneurs' Blocks

169. The special provisions which we adopt for designated entities are based, in part, on our mandate to fulfill the congressional goal that we disseminate licenses among a wide variety of applicants. 47 U.S.C. §309(j)(3)(B). Therefore, in adopting the financial assistance measures set forth in this Report and Order, we are concerned about the possibility, even if remote, that a few bidders will win a very large number of the licenses in the entrepreneurs' blocks. As a consequence, the benefits that Congress intended for designated entities would be enjoyed, in disproportionate measure, by only a few individuals or entities. Congress, in our view, did not intend that result. We shall therefore take steps to ensure that the financial assistance provided through our rules is dispersed to a reasonable number of applicants who win licenses in these blocks.

170. To achieve a fair distribution of the benefits intended by Congress, we shall impose a reasonable limit on the total number of licenses within the entrepreneurs' blocks that a single entity may win at auction. In setting this limit, we shall take care not to impose a restriction that would prevent applicants from obtaining a sufficient number of licenses to create large and efficient regional services. Specifically, we shall impose a limitation that no single entity may win more than 10 percent of the licenses available in the entrepreneurs' blocks, or 98 licenses. These licenses may all be in frequency block C or all in frequency block F, or in some combination of the two blocks. Such a limit will ensure that at least ten winning bidders enjoy the benefits of the entrepreneurs' blocks. At the same time, it will allow bidders to effectuate aggregation strategies that include large numbers of licenses and extensive geographic coverage.

171. Further, this limitation will apply only to the total number of licenses that may be won at auctions in these blocks; it is not an ownership cap that applies to licenses that might be obtained after the auctions. For purposes of implementing this restriction, we shall consider licenses to be won by the same entity if an applicant (or other entity) that controls, or has the power to control licenses won at the auction, controls or has the power to control another license won at the auction.

2. Definition of Small Business

172. In the Second Report and Order we adopted a definition for small businesses based on the standard definition used by the Small Business Administration (SBA). This definition permits an applicant to qualify for installment payments based on a net worth not in excess of $6 million with average net income after Federal income taxes for the two

preceding years not in excess of $2 million. 13 C.F.R. § 121.601.[146] In the Second Report and Order, we noted, however, that, in certain telecommunications industry sectors, this limit may not be high enough to encompass those entities that, while needing the assistance provided by installment payments, have the financial wherewithal to construct and operate the systems. Therefore we indicated that, on a service specific basis, we might adjust this definition upward to accommodate capital intensive telecommunications businesses. See Second Report and Order at ¶ 267.

173. Many commenters, including the Chief Counsel for Advocacy of the SBA, argue that the SBA net worth/net revenue definition is too restrictive and will exclude businesses of sufficient size to survive, much less succeed, in the competitive broadband PCS marketplace. The SBA's Chief Counsel for Advocacy and the Suite 12 Group advocate adoption of a gross revenue test, arguing that a net worth test could be misleading as some very large companies have low net worth. The SBA's Chief Counsel for Advocacy recommends that the revenue standard be raised to include firms that (together with affiliates) have less than $40 million in gross revenues. Similarly, Suite 12 suggests a $75 million in annual sales threshold.[147] As another option, the SBA's Chief Counsel for Advocacy suggests that the Commission consider a higher revenue ceiling or adopt different size standards for different telecommunications markets.[148]

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[146] The SBA has recently changed its net worth/net income standard as it applies to its Small Business Investment Company (SBIC) Program. See 59 Fed. Reg. 16953, 16956 (April 8, 1994). The new standard for determining eligibility for small business concerns applying for financial and/or management assistance under the SBIC program was increased to $18 million net worth and $6 million after-tax net income. 15 C.F.R. § 121.802(a)(3)(i). The change in this size standard was attributable to an adjustment for inflation and changes in the SBIC program "designed to strengthen and expand the capabilities of SBICs to finance small businesses so that they can increase their contribution to economic growth and job creation." 59 Fed. Reg. at 16955. However, Section 121.601, which was the SBA size standard cited in the Notice and the Second Report and Order, has not been modified by the SBA. For purposes of our generic competitive bidding rules, in consultation with the SBA, we will reexamine our $6 million net worth/$2 million annual profits definition in light of the SBA's recent action.

[147] Many other commenters set forth their recommendations on the appropriate small business definition for broadband PCS preferences. See, e.g., comments of Tri-State ($5 million average annual operating cash flow), Luxcel (net worth not exceeding $20 million), and Iowa Network (less than $40 million in annual revenues).

[148] Some parties recommend using the SBA's alternative 1500 employee standard. See, e.g., comments of SBA Associate Administrator for Procurement Assistance at 2, CFW Communications at 2, and Iowa Network at 17. A number of other commenters, including the SBA's Chief Counsel for Advocacy, argue, however, that adoption of this alternative SBA definition would open up a huge loophole in the designated entity eligibility criteria.

174. We expect broadband PCS to be a highly capital intensive business requiring bidders to expend tens of millions of dollars to acquire a license and construct a system even in the smaller broadband PCS markets. Thus, we believe that our current small business definition is overly restrictive because it would exclude most businesses possessing the financial resources to compete successfully in the provision of broadband PCS services. Accordingly, we modify our small business definition for broadband PCS auctions to ensure the participation of small businesses with the financial resources to compete effectively in an auction and in the provision of broadband PCS services.

175. There is substantial support in the record for a $40 million gross revenue standard. For example, the SBA recommends that for broadband PCS, a small business be defined as one whose average annual gross revenues for its past three years do not exceed $40 million.[149] It states that this definition isolates those companies that have significantly greater difficulty in obtaining capital than larger enterprises. At the same time, the SBA contends that a company with $40 million in revenue is sufficiently large that it could survive in a competitive wireless communications market.[150] Similarly, the SBA Chief Counsel for Advocacy asserts that a $40 million threshold will allow participation by firms "of sufficient size to meet demands in almost all small markets and some medium-size markets without significant outside financial assistance."[151] For purposes of broadband PCS, we shall therefore define a small business as any firm, together with its attributable investors and affiliates, with average gross revenues for the three preceding years not in excess of $40 million.[152] In

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Specifically, they contend that telecommunications is a capital, rather than labor, intensive industry, and that an entity with 1,500 employees is likely to be extremely well capitalized and have no need for the special treatment mandated by Congress in the Budget Act. See, e.g., comments of SBA Chief Counsel for Advocacy at 8, LuxCel Group, Inc. at 4, Suite 12 Group at 10-11.

[149] Ex parte filing of U.S. Small Business Administration, June 24, 1994.

[150] Id.

[151] Comments of SBA Office of Advocacy at 10. Cf. comments of Iowa Network and Telephone Electronics Corporation (advocating a $40 million annual revenue criterion for telephone companies) and reply comments of North American Interactive Partners and Kingwood Associates (advocating $40 million gross-revenue criterion for applicants for the fifty most-populous BTAs, based on estimated average build-out cost).

[152] The establishment of small business size standards is generally governed by Section 3 of the Small Business Act of 1953, as amended, 15 U.S.C. § 642 (a). Recent amendments to that statute provide that small business size standards developed by Federal agencies must be based on the average gross revenues of such business over a period of not less than three years. See Pub. L. No. 102-366, Title II, § 222 (a), 106 Stat. 999 (1992); 15 U.S.C. § 632 (a) (2) (B) (ii).

addition, an applicant will not qualify as a small business if any one attributable investor in, or affiliate of, the entity has $40 million or more in personal net worth.[153]

176. For purposes of determining whether an entity qualifies as a small business, we will follow the control group and attribution rules set forth with regard to eligibility to bid in the entrepreneurs' blocks. In particular, winning bidders are required to identify on their long-form applications a control group that holds at least 50.1 percent of the voting interests of the applicant (and otherwise has de facto control) and owns at least a 25 percent equity stake. The gross revenues of each member of the control group and each member's affiliates will be counted toward the $40 million gross revenue threshold, regardless of the size of the member's total interest in the applicant. The $40 million personal net worth limitation will also apply to each member of the control group. We will not consider the gross revenues or personal net worth of any other investor unless the investor holds 25 percent or more of the outstanding passive equity in the applicant, which, as defined above, includes as much as five percent of the voting stock in a corporate applicant.

177. We also adopt the more relaxed attribution standard set forth in the entrepreneurs' blocks section with regard to investors in minority and female-owned applicants. Specifically, we will not consider the gross revenues or personal net worth of a single passive investor in a minority or female-owned small business unless the investor holds in excess of a 49.9 percent passive interest (which includes as much as five percent of a corporate applicant's voting stock), provided the women or minority control group maintains at least 50.1 percent of the equity and, in the case of a corporate applicant, at least 50.1 percent of the voting stock.[154] We believe that such revenue attribution will ensure that only bona fide small businesses are able to take advantage of the special provisions we have adopted, but will allow those businesses to attract sufficient equity capital to be truly viable contenders in the PCS industry.

178. These financial eligibility rules will continue to apply throughout the license term. Thus, firms that received bidding credits and "enhanced" installment payments based on their small business status will be subject to the repayment penalties outlined above, if an investor subsequently purchases an "attributable" interest (e.g. 25 percent or more of the firm's equity) and, as a result, the gross revenues of the firm exceed the $40 million gross

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[153] Unlike our eligibility criteria to bid in the entrepreneurs' blocks, we do not adopt a total assets standard here. We believe that the $40 million gross revenue cap for small businesses, together with the $500 million total asset threshold we set for entry into the entrepreneurs' blocks in the first instance, should be sufficient to ensure that only bona fide small businesses are able to take advantage of the measures intended for those designated entities.

[154] See supra ¶ 160.

revenues cap, or the personal net worth of the investor exceeds the $40 million personal net worth threshold.

179. Finally we will allow a consortium of small businesses to qualify for any of the measures adopted in this order applicable to individual small businesses. As used here, the term "consortium" means a conglomerate organization formed as a joint venture among mutually-independent business firms, each of which individually satisfies the definition of a small business.

180. Several commenters argue that a consortium should not qualify for special treatment unless the consortium itself meets the established definitional criteria.[155] They contend that the FCC should not allow consortia to be used as a means of circumventing the usual prerequisites for these special provisions. In the Second Report and Order, we concluded that consortia might be permitted to receive benefits based on participation in the consortium by one or more designated entities, but believed such a consortium should not be entitled to qualify for measures designed specifically for designated entities. As a general matter, we shall continue to adhere to that principle. We think, however, that in the broadband PCS service, allowing small businesses to pool their resources in this manner is necessary to help them overcome capital formation problems and thereby ensure their opportunity to participate in auctions and to become strong broadband PCS competitors. Because of the exceptionally large capital requirements in this service, we agree with the SBA Chief Counsel for Advocacy that, so long as individual members of the consortium satisfy the definition of a small business, the congressional objective of ensuring opportunities for small businesses will be fully met. Individual small entities that join to form consortia, as distinguished from a single entity with gross revenues in excess of $40 million, still are likely to encounter capital access problems and, thus, should qualify for measures aimed at small businesses. We do not believe however, that this congressional goal will be satisfied if special measures are allowed for consortia that are "predominantly" or "significantly" owned and/or controlled by small businesses, as recommended by several commenters.[156] This would have the effect of eviscerating our small business definitional criteria and would not further the ability of bona fide small businesses to participate in PCS services.

3. Definition of Women and Minority-Owned Business

181. As discussed above, we have taken steps in this order to address the special funding problems faced by minority and women-owned firms and thereby to ensure that these groups have the opportunity to participate and become strong competitors in the broadband

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[155] See comments of McCaw at 21 and Myers at 6.

[156] See, e.g., comments of Rural Cellular Corp. at 2, Bell Atlantic at 17, NAMTEC at 19, and AT& T at 25-26.

PCS service.[157] We thus have adopted a tax certificate program for women and minorities to allow more sources of potential funding, have relaxed the attribution standard used to determine eligibility to bid for licenses on frequency blocks C and F, and have adopted special measures for installment payments and bidding credits.

182. As also indicated above, for purposes of implementing these steps, we have departed from the definition of a minority and woman-owned firm that was adopted in the Second Report and Order. There, we found generally that to establish ownership by minorities and women, a strict eligibility standard should be adopted that required minorities or women to have at least a 50.1 percent equity stake and a 50.1 percent controlling interest in the designated entity. Second Report and Order at ¶ 277; 47 C.F.R. § 1.2110(b)(2). For the broadband PCS auctions, we retain the requirement that minorities and/or women control the applicant and hold at least 50.1 percent of a corporate applicant's voting stock. However, to establish their eligibility for certain benefits, summarized below, we shall impose an additional requirement that, even where minorities and women hold at least 50.1 percent of the applicant's equity, other investors in the applicant may own only passive interests, which, for corporate applicants, is defined to include as much as five percent of the voting stock. In addition, provided that certain restrictions are met, we shall also allow women and minority-owned firms the option to reduce to 25 percent the 50.1 percent minimum equity amount that must be held.

183. We emphasized in the Second Report and Order that we did not intend to restrict the use of various equity financing mechanisms and incentives to attract financing, provided that the minority and women principals continued to own 50.1 percent of the equity, calculated on a fully-diluted basis, and that their equity interest entitled them to a substantial stake in the profits and liquidation value of the venture relative to the non-controlling principals. We noted, however, that different standards that meet the same objectives may be appropriate in other contexts. Second Report and Order at ¶ 278. In view of the evidence of discriminatory lending experiences faced by minority and women entrepreneurs and the exceptionally great financial resources believed to be required by broadband PCS applicants, we conclude that it is appropriate to allow more flexibility with regard to the 50.1 percent equity requirements for this service in order to open doors to more sources of equity financing for women and minority-owned firms.

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[157] As noted in the Second Report and Order, the members of the following groups will be considered "minorities" for purposes of our rules: "[T]hose of Black, Hispanic Surnamed, American Eskimo, Aleut, American Indian and Asiatic American extraction." See Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 980 n.8 (1978); Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849, 489 n.1 (1982). Moreover, as adopted in the Second Report and Order, minority and women-owned businesses will be eligible for special measures only if the minority and women principals are also United States citizens.

184. We shall therefore allow women and minority-owned firms the following options. First, they may satisfy the general definition set forth in the Second Report and Order, which requires the minority and/or female principals to control the applicant, own at least 50.1 percent of its equity and, in the case of corporate applicants, hold at least 50.1 percent of the voting stock. Under this option, other investors may own as much as a 49.9 percent passive equity interest. As noted above regarding eligibility to bid in the entrepreneurs' blocks, passive equity in the corporate context means only non-voting stock may be held, or stock that includes no more than five percent of the voting interests.[158] For partnerships, the term means limited partnership interests that do not have the power to exercise control of the entity. In addition, as required in the Second Report and Order, all investor interests will be calculated on a fully-diluted basis, meaning that agreements such as stock options, warrants and convertible debentures generally will be considered to have a present effect and will be treated as if the rights thereunder already have been fully exercised.[159] We recognize that the requirement that other investors own only passive interests is a departure from the definition of a minority or women-owned business adopted in the Second Report and Order, but because of the very significant financial contribution that may be made by such other investors in designated entities, we believe that the passive equity requirement is appropriate as an additional safeguard to ensure that minorities and/or women retain control of the applicant.

185. As a second option, women and minority-owned firms may sell up to 75 percent of the company's equity, provided that no single investor may hold 25 percent or more of the firm's passive equity, which is defined in the same manner as above. For example, a corporation with 100 shares of voting stock and 100 shares of non-voting stock, with the 200 shares representing the total outstanding shares of the company, could qualify as a minority or women-owned business under the following circumstances. The minority or women principals would have to own at least 51 shares of voting stock, which satisfies the requirement that they have voting control and, in this case, also meets the requirement that

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[158] For example, under this option, a corporate applicant with two classes of issued and outstanding stock, 100 shares of voting stock and 100 shares of non-voting stock, could sell to a single non-eligible entity 49.9 percent of the applicant's equity, consisting of 5 shares of the corporation's voting stock and 94 shares of its non-voting stock. Under this scenario, eligible minorities or women, in order to retain at least 50.1 percent of the value of all outstanding shares of the corporation's stock, must own all of the corporation's remaining shares of stock; that is, 95 shares of voting stock and six shares of non-voting stock.

[159] As also noted in the Second Report and Order, we will consider departing from the requirement that the equity of investors in minority and women-owned businesses must be calculated on a fully-diluted basis only upon a demonstration, in individual cases, that options or conversion rights held by non-controlling principals will not deprive the minority and women principals of a substantial financial stake in the venture or impair their rights to control the designated entity. See Second Report and Order at ¶ 277.

they hold at least 25 percent of the equity. Two other investors could each own 44 shares of non-voting stock and five shares of voting stock, which represents 24.5 percent of the company's equity for each of the shareholders. A third investor could own the remaining 12 shares of non-voting stock and five shares of the voting stock, or 8.5 percent of the equity. The remaining 34 shares of voting stock may be sold to other investors provided that no single investor owns more than five shares.

186. Whichever option is chosen, we will require establishment of a "control group" in much the same way we did for purposes of eligibility to bid in the entrepreneurs' blocks. Specifically, winning bidders, transferees or assignees must identify on their long-form applications a control group (consisting entirely of minorities and/or women or entities 100 percent owned and controlled by minorities and women) that has de jure and de facto control of the applicant and holds either at least 50.1 or 25 percent of the applicant's equity, depending upon which option is elected.

187. We believe that a modification of our 50.1 percent equity requirement will best achieve Congress' objective of providing effective and long-term economic opportunities for women and minority-owned firms in broadband PCS. At the same time, we shall maintain strict enforcement of the requirement that actual control reside with the qualified designated entities. Thus, to establish their eligibility for tax certificates, enhanced installment payments, bidding credits and relaxed cellular attribution rules, women and minority-owned applicants electing to use the 25 percent equity option may not in any instance allow an individual investor who is not in the control group to own more than a 25 percent passive equity interest. This restriction will apply even in circumstances in which allowing an investor to exceed these limitations would not result in the applicant's exceeding the gross revenues and other financial standards that apply to other bidders in the entrepreneurs' blocks and other situations involving financial caps. These structural safeguards, as well as the general requirement that other investors hold only passive interests in women and minority-owned applicants, will help to ensure that control truly remains with the women and minority designated entities.

188. For example, a women or minority-owned firm electing to use the 25 percent option may have a non-eligible investor with more than a 25 percent passive stake and still qualify to bid in the entrepreneurs' blocks or for benefits that apply to small businesses, as long as the attributable revenues of the investor do not cause the applicant to exceed the gross revenues/total assets caps. In these contexts, no additional restrictions are necessary, because women and minority-owned applicants, like other applicants, are eligible to bid in these blocks and to qualify as small businesses so long as they comply with the same restrictions on financial eligibility that apply to other applicants. Since the attribution rule itself operates to ensure compliance with size limitations, it is not necessary to impose additional restrictions on the size of interests held by investors with attributable interests. This firm will not qualify, however, for special measures applicable only to women and minority-owned businesses, such as "enhanced" installment payments or the 15 or 25 percent bidding credits, because it has a single non-eligible investor with more than a 25 percent passive interest. In

circumstances in which women and minorities are required to retain only 25 percent of the firm's equity, this additional structural restriction is appropriate because the objective in this context is to ensure not merely financial eligibility, but that women and minorities retain control of the license.

189. We set forth previously rules defining more explicitly the term "control" for purposes of determining whether a "control group" maintains de facto as well as de jure control of an applicant.[160] Those rules apply equally to the minority and women principals of minority and women-owned applicants. Consistent with our general policies with regard to women-owned applicants for purposes of our multiple ownership and cross-ownership rules in this broadcast context, we shall not adopt, at this time, any special rules or presumptions to determine whether women-owned applicants exercise independent control of their firms. See In the Matter of Clarification of Commission Policies Regarding Spousal Attribution, 7 FCC Rcd. 1920 (1992)

190. Our requirement that control rest with minorities and/or women and the clarifications above ensure that parties do not attempt to evade the statutory requirement to provide economic opportunities and ensure participation by businesses owned by these groups. We reaffirm our commitment to investigate all allegations of fronts, shams or other methods used by those who try to obtain a benefit to which they are not lawfully entitled. In this vein, we again admonish parties that we will conduct random pre and post-auction audits to ensure that applicants receiving these benefits are bona fide designated entities.

191. We also note here that we are departing from the provision in the Second Report and Order that bars publicly traded companies from qualifying as minority and woman-owned businesses for purposes of participating in auctions. Most of the steps taken to assist these designated entities in this Order (e.g., bidding credits and installment payments) are confined to winning bidders in the entrepreneurs' blocks, where there is a financial limit on the size of participants. Because of the expected large capital entry costs of broadband PCS, we believe that even publicly traded companies owned by women and minorities that qualify to bid in blocks C and F require additional measures, such as bidding credits and installment payments, to be able to participate successfully. We emphasize, however, that the exception to the attribution rules for publicly traded companies to be eligible to bid in the entrepreneurs' blocks does not apply here.[161] To qualify for measures targeted exclusively to women and minority-owned businesses, a company must satisfy the definition set forth in this section.

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[160] See supra ¶ 164.

[161] With regard to qualifying to bid in the entrepreneurs' blocks, we stated that we would not attribute the revenues or assets of an investor that owns up to 15 percent of a publicly traded applicant's voting stock. For privately held companies, the voting stock threshold is five percent. See supra ¶¶ 158, 163.

192. As noted above, applicants owned by women and minorities must meet the limitations on gross revenues, total assets and personal net worth to qualify for entry into the entrepreneurs' blocks. The size limitations do not apply, however, to all measures designed to assist applicants owned by minorities and\or women. The tax certificate policy applies to all broadband PCS licenses and is not limited to licenses in the entrepreneurs' blocks. Therefore, businesses owned by minorities and women need not meet the gross revenue and other financial restrictions to qualify for tax certificates. Similarly, the relaxed cellular attribution threshold for minority and woman-owned firms adopted in the Broadband PCS Reconsideration Order is not limited to the entrepreneurs' blocks. Thus, minority and women-owned firms that do not meet the gross revenues, total assets and net worth restrictions may nevertheless qualify for the 40 percent cellular attribution rule. But minority and women-owned firms must satisfy the Commission's structural ownership requirements to receive the benefits of tax certificates and the relaxed cellular attribution rule; that is, they are subject to the limitation that interests held by investors who are not women and minorities must be passive.

4. Definition of Rural Telephone Company

193. As discussed above, we have adopted several measures to assist rural telephone companies in the broadband PCS service. We decide here the definition of rural telephone companies who are eligible for those benefits. As explained below, for this service, we shall depart from the definition adopted in the Second Report and Order and define rural telephone companies as local exchange carriers having 100,000 or fewer access lines, including all affiliates.

194. As we pointed out in the Second Report and Order,[162] most of those responding to our tentative conclusion in the Notice concerning the definition of a rural telephone company contended that the proposed definition, which was based on the standard contained in Section 63.58 of the Commission's Rules, was too restrictive. A variety of more inclusive definitions were recommended.[163] Some commenters advocated a definition in which a company would qualify if it satisfied either of two alternative criteria based on population of communities served or number of access lines.[164] Others advocated adoption of a definition

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[162] Second Report and Order at ¶¶ 279-282.

[163] See, e.g., comments of Saco River, Telephone Electronics, and Iowa Network (advocating amending the proposed definition merely by raising the population threshold to 10,000), and comments of Chickasaw (advocating definition including companies that predominantly, but not exclusively, serve customers in communities of less than 10,000 in non-urbanized areas).

[164] See, e.g., comments of Telocator, TDS, NYNEX, NOTA, NTCA and Saco River (recommending a definition including companies that either provide service only within communities of 10,000 or less in non-urbanized areas or provide 10,000 or fewer access lines

focusing simply on the number of access lines provided.[165] One commenter advocated a definition focusing exclusively on revenues rather than access lines, with the standard for rural telephone company status at annual revenues under $100 million.[166] In addition, some advocated a somewhat more restrictive definition.[167]

195. Many commenters suggested limiting rural telephone eligibility to carriers serving communities with no more than 10,000 inhabitants, asserting that such a standard better comports with common notions about which telephone companies are "rural."[168] A number of other commenters supported a definition of rural telephone company that would include a limitation on the size of the company. OPASTCO, for example, asserted that such a limitation would comport with the statutory mandate to ensure opportunity for rural telephone companies because "the problem such companies face in the competitive bidding arena" is as much a function of their size as of the rural character of their service areas."[169] NTCA similarly contended that small companies have shown the interest and commitment needed to fulfill the explicit statutory goal of "rapid deployment of new . . . services for . . . those residing in rural areas," citing as support a report on the deployment of digital switching by small LECs.[170] Other parties suggested that we look to the unenacted antecedent of the Budget Act, S.1134, in which a rural telephone company was defined as an entity that either (a) "provides telephone exchange service by wire in a rural area" (i.e., a non-urbanized area

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(and no more than 150,000 in conjunction with affiliates)); comments of OPASTCO (recommending defining rural telephone companies as those that either provide exchange service only within communities of 10,000 or less in non-urbanized areas or that provide 50,000 or fewer access lines; and comments of SBA Chief Counsel for Advocacy (recommending a definition including companies serving communities of 20,000 or less in non-urbanized areas or providing 50,000 or fewer access lines (including lines provided by affiliates)).

[165] See, e.g., comments of STCL, MEBTEL, CFW, Minnesota Equal Access Network, Rural Cellular Assn., Rural Cellular Corp., Rochester Tel. Corp, McCaw, DialPage, APC, TDS and Gulf Telephone Co. (suggesting caps between 25,000 and 150,000 access lines).

[166] Comments of PMN.

[167] See, e.g., comments of GTE (definition would apply only to companies that exclusively serve customers in communities of 10,000 or less in non-urbanized areas and that provide wireline exchange service to 10,000 or fewer customers).

[168] See, e.g., comments of OPASTCO, Iowa Network, Saco River and Telephone Electronics.

[169] Comments of OPASTCO at 5.

[170] Comments of NTCA at 7-8.

containing no incorporated place with more than 10,000 inhabitants), (b) "provides telephone exchange service by wire to less than 10,000 subscribers," or (c) "is a telephone utility whose income accrues to a State or political subdivision thereof."

196. In the Second Report and Order, we adopted a definition of "rural telephone company" that includes independently owned and operated local exchange carriers that (1) do not serve communities with more than 10,000 inhabitants in the licensed area, and (2) do not have more than 50,000 access lines, including all affiliates. 47 C.F.R. § 1.2110(b)(3). We stated our belief that a limitation on the size of eligible rural telephone companies is appropriate because Congress did not intend for us to give special treatment to large LECs that happen to serve small rural communities. See Second Report and Order at ¶ 282.

197. Several parties who filed petitions for reconsideration of the Second Report and Order argue that the definition adopted for rural telephone companies may be too restrictive given the capital intensive nature of broadband PCS.[171] We also note that NTCA argued in its comments in this proceeding that it is neither necessary nor appropriate to use the same criteria to define rural telephone companies in rules pertaining to different services, technologies, and industries.[172] Likewise, in an ex parte letter, OPASTCO states that by defining rural telephone company for purposes of broadband PCS as a local exchange carrier with less than $100 million in revenue, the Commission will properly capture in the defined class locally-owned telephone companies who are truly interested in providing services to rural areas.[173] OPASTCO notes that the "same universe of companies" that would fall under such a revenue threshold would be captured by a definition that includes all telephone companies having 100,000 or fewer access lines.[174]

198. Our challenge in establishing a definition of a rural telephone company for broadband PCS is to achieve the congressional goal of promoting the rapid deployment of this new service in rural areas by targeting only those telephone companies whose service territories are predominantly rural in nature, and who are thus likely to be able to use on their existing wireline telephone networks to build broadband PCS infrastructures to serve rural America. For purposes of our rules governing broadband PCS licenses, we believe that this goal can best be achieved if we define rural telephone companies as those local exchange carriers having 100,000 or fewer access lines, including all affiliates. We agree with

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[171] See, e.g., petitions of South Dakota Network (SDN), U.S. Intelco, NTCA, Rural Cellular Association and TDS. We note that similar arguments have been made with respect to other services.

[172] See comments of NTCA at 4.

[173] Ex parte filing of filing of OPASTCO, June 2, 1994, at 2; see also comments of PMN at 7-8.

[174] Id.

OPASTCO that such a definition will include virtually all of the telephone companies who genuinely are interested in providing services to rural areas. This definition will encourage participation by legitimate rural telephone companies without providing special treatment to large LECs. Therefore, we will better achieve the congressional goal of providing service rapidly to rural areas without giving benefits to large companies that do not require such assistance. Rural telephone companies that satisfy this definition thus will be eligible for rural partitioning, as discussed above.[175]

199. Anchorage Telephone Company argues in a petition for reconsideration of the Second Report and Order that our definition of a rural telephone company should include telephone companies that are owned by governmental authorities. Anchorage contends that Congress meant to mandate special consideration not only for telephone carriers serving rural areas but also for all municipally-owned telcos, even those with wholly or predominantly urban service areas.[176] This argument is based on its interpretation of the Senate bill that was antecedent to the enacted Budget Act. Anchorage argues that the Senate bill containing the prototype of a mandate for special consideration for rural telephone companies directed the FCC to grant "rural program licenses" to "qualified" common carriers and explicitly said that the category of "qualified" carriers included all state-owned and municipally-owned telephone companies. Anchorage further states that the report of the conference committee that drafted the Budget Act declares that the Senate's "findings" are incorporated by reference.[177] Anchorage also asserts that without the aid of special assistance it and most other state-owned and municipal telcos won't be able to purchase spectrum licenses at auction because it is politically infeasible for them to generate and retain enough surplus revenue to fund such investments, due to popular aversion to increases in taxes or telephone rates.[178]

200. We find no merit in Anchorage's arguments. There is no specific evidence that Congress intended the term "rural telephone companies" to include all state or municipally-owned telephone companies. To the contrary, the fact that an antecedent bill contained an explicit mandate for preferential treatment of government-owned telephone companies that was deleted from the enacted bill could just as easily be interpreted as an indication that Congress rejected such a rule. Further, we disagree that state and municipal governments lack the means to participate successfully in auctions. Such governments have substantial capabilities to raise funds through private financing, bond offerings and taxation. Therefore, our definition of a rural telephone company will not encompass telephone companies that are owned by government authorities.

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[175] Such companies also will be eligible for special treatment under our cellular attribution rules for broadband PCS. See 47 C.F.R. § 24.204(d)(2)(ii).

[176] Anchorage Petition at 2-3.

[177] Id.

[178] Id. at 4-5.

5. Definition of an Affiliate

201. Many of the eligibility criteria set forth above are based on the size of the entity applying for a broadband PCS license and/or seeking special treatment under our designated entity policies. Each of these size standards ($125 million gross revenues/$500 million total assets/$100 million personal net worth, $40 million gross revenues/$40 million personal net worth, and 100,000 access lines) requires applicants to include, among other parties, "affiliates" when calculating their attributable gross revenues, total assets, net worth or access lines. This affiliation requirement is intended to prevent entities that, for all practical purposes, do not meet these size standards from receiving benefits targeted to smaller entities.[179] We adopt specific affiliation rules for purposes of applying these eligibility criteria based in part on the Small Business Administration's affiliation rules.[180]

202. In the Second Report and Order, we referenced the SBA's affiliation rules for purposes of defining generally whether an entity qualifies as a small business and gave examples of how the affiliation rules would be applied. We continue to believe that the SBA's affiliation rules provide a solid foundation on which to build our own affiliation rules for purposes of the small business definition for broadband PCS and for the other size standards adopted in this order.[181] Accordingly, for purposes of these eligibility restrictions, we will again borrow from the SBA's rules for outside affiliations. In addition, to ensure that applicants have clear guidance concerning these matters, we shall include in our rules more detailed information concerning the circumstances in which an entity will be deemed an affiliate of the applicant.

203. Like the eligibility rules we have adopted here governing size limitations for broadband PCS, the SBA's rules provide that size determinations shall include the applicant and all of its "affiliates."[182] At the outset, before considering in more detail all the types of affiliations that might exist when guided by the SBA rules, we review briefly our own rules described above, concerning attributable interests. Those rules provide that, so long as a control group is established, the gross revenues, assets or net worth of an investor in a PCS applicant or licensee will be attributed to the applicant or licensee only if the investor holds more than 25 percent of the applicant's passive equity or is part of a control group that

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[179] See, e.g., Second Report and Order at ¶ 272.

[180] See 13 C.F.R. § 121.401 (1993) (formerly at 13 C.F.R. § 121.3 (1989)).

[181] SBA's affiliation rules were promulgated under the authority in Section 3 of the Small Business Act of 1953, as amended, 15 U.S.C. § 632, which provides that, to be eligible for benefits provided by SBA and other agencies, a "small-business concern" must be "independently owned and operated." See Small Business Size Standards, 54 Fed. Reg. 52634 (December 21, 1989).

[182] See 13 C.F.R. § 121.401(a).

controls the applicant. Therefore, only where an investor has such attributable interests in the broadband PCS applicant or licensee do we need to examine whether the investor has a relationship with other persons or outside entities that rises to the level of an affiliation with the PCS applicant, and if so, whether the affiliate's revenues or net worth, when aggregated with the applicant's, exceed our size eligibility thresholds.

204. General Principles of Affiliation. When such an attributable interest exists, an affiliation under the SBA rules would arise, first, from "control" of an entity or the "power to control it." Thus, under the SBA rules, entities are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party or parties controls or has the power to control both. 13 C.F.R. § 121.401(a)(2)(i), (ii). In determining control, the SBA's rules provide generally that every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. The rules, in addition, provide specific examples of where control resides under various scenarios, such as through stock ownership or occupancy of director, officer or management positions. The rules also articulate general principles of control, and note, for example, that control may be affirmative or negative and that it is immaterial whether control is exercised so long as the power to control exists. Id. § 121.401(c)(1). Second, an affiliation, under SBA rules, may also arise out of an "identity of interest" between or among parties. Id. § 121.401(a)(2)(iii), (d). We shall adopt these same general provisions in our affiliation rules for broadband PCS.

205. In adopting these affiliation rules, we emphasize that these rules will not be applied in a manner that defeats the objectives of our attribution rules. Our attribution rules expressly permit applicants to disregard the gross revenues, total assets and net worth of passive investors, provided that an eligible control group has de facto and de jure control of the applicant. Our attribution rules are designed to preserve control of the applicant by eligible entities, yet allow investment in the applicant by entities that do not meet the size restrictions in our rules. Therefore, so long as the requirements of our attribution rules are met, the affilation rules will not be used to defeat the underlying policy objectives of allowing such passive investors. More specifically, if a control group has de facto and de jure control of the applicant, we shall not construe the affiliation rules in a manner that causes the interests of passive investors to be attributed to the applicant.

206. Applying these SBA affiliation rules, an affiliation would arise, for example, where an entity with an attributable interest in a broadband PCS applicant is under the control of another entity. An affiliation would also arise where an entity with an attributable interest in a broadband PCS applicant controls, or has the power to control, another entity. For example, if a 10 percent voting shareholder of a PCS applicant is also a shareholder in a large Corporation X, when should Corporation X be deemed an affiliate of the PCS applicant as a result of the shareholder's ownership interest in both entities? Under the SBA rules and the rules we adopt here, Corporation X would be deemed an affiliate of the applicant if the shareholder controlled or had the power to control Corporation X, in which case, Corporation X's gross revenues must be included in determining the applicant's gross revenues.

207. For purposes of determining control, ownership interests will be calculated on a fully-diluted basis. Thus, for example, stock options, convertible debentures, and agreements to merge (including agreements in principle) will generally be considered to have a present effect on the power to control or own an interest in either an outside entity or the PCS applicant or licensee.[183] We will treat such options, debentures, and agreements generally as though the rights held thereunder had been exercised.[184] However, an affiliate cannot use such options and debentures to appear to terminate its control over or relationship with another concern before it actually does so.[185]

208. Voting and Other Trusts. In a similar vein, we also borrow from the SBA's rules and our own rules in other services to find affiliation under certain voting trusts in order to prevent a circumvention of eligibility rules. The SBA's rules provide that a voting trust, or similar agreement, cannot be used to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control an outside concern,

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[183] We recognize that we have adopted a different rule for purposes of our broadband PCS-cellular ownership rules. See 47 C.F.R § 24.204(d)(2)(v). In that context, however, our purpose was not to establish the financial position, or potential financial position, of applicants bidding in auctions.

[184] See 13 C.F.R § 121.401(f). SBA's rules provide the following examples to guide the application of this provision:

> Example 1. If company "A" holds an option to purchase a controlling interest in company "B," the situation is treated as though company "A" had exercised its rights and had become owner of a controlling interest in company "B." The [annual revenues] of both concerns must be taken into account in determining size.
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> Example 2. If company "A" has entered into an agreement to merge with company "B" in the future, the situation is treated as though the merger has taken place. [A and B are affiliates of each other].

[185] Id. SBA's rules provide this example:

> If large company "A" holds 70% (70 of 100 outstanding shares) of the voting stock of company "B" and gives a third party an option to purchase 66 of the 70 shares owned by A, company "B" will be deemed to be an affiliate of company "A" until the third party actually exercises its option to purchase such shares. In order to prevent large company "A" from circumventing the intent of the regulation which [gives] present effect to stock options, the option is not considered to have present effect in this case.

if the primary purpose of the trust is to meet size eligibility rules.[186] Similarly, under the Commission's broadcast multiple ownership rules, stock interests held in trust may be attributed to any person who holds or shares the power to vote such stock, has the sole power to sell such stock, has the right to revoke the trust at will or to replace the trustee at will.[187] Also, under the broadcast rules, if a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary of a trust, the stock interests held in trust will be considered assets of the grantor or beneficiary, as appropriate.[188] Because we believe the broadcast rules provide more definitive guidance in this particular area, we shall use them as a model for the affiliation rules adopted here. Thus, for example, if an investor with an attributable interest in a PCS applicant holds a beneficial interest in stock of another firm that amounts to a controlling interest in that other firm, depending on the identity of the trustee, the other firm may be considered an affiliate and its assets and gross revenues may be attributed to the PCS applicant.

209. Officers, Directors and Key Employees. Under the SBA's affiliation rules, affiliations also generally arise where persons serve as the officers, directors or key employees of another concern and they represent a majority or controlling element of that other concern's board of directors and/or management of the outside entity.[189] We shall adopt an identical rule. Thus, if a person with an attributable interest in a broadband PCS applicant, through his or her other key employment positions or positions on the board of another firm, controls that other firm, then the other firm will be considered an affiliate of the applicant. Such affiliations may or may not result in the applicant's exceeding our size limitations. As this rule reflects, for purposes of attributing the financial position of an outside entity in this context, officers and directors of an outside concern are not foreclosed entirely from holding attributable or non-attributable interests in a PCS applicant. Whether or not such persons control the outside entity, we also do not want to prohibit these persons, who may be experienced in the telecommunications, finance, or communications and equipment industries, from assisting start-up companies in PCS by serving as officers or directors of the applicant. Thus, under our general attribution rule, if such persons serving as officers or directors of the applicant do not control the applicant or otherwise have an attributable interest in the applicant, their outside affiliations (even if controlling) will not be considered at all for

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[186] 13 C.F.R. § 121.401(g).

[187] See 47 C.F.R. § 73.3555 note 2(e).

[188] Id.

[189] See 13 C.F.R. § 121.401(h). A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. 13 C.F.R. § 121.405.

purposes of determining the applicant's eligibility under our rules.[190]

210. Affiliation Through Identity of Interest: Family and Spousal Relationships. As expressed in the SBA's rules, an affiliation may arise not only through control, but out of an "identity of interest" between or among parties. See 13 C.F.R. § 121.401(a)(2)(iii). For example, affiliation can arise between or among members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control an entity, persons with an identity of interest may be treated as though they were one person. Id. at § 121.401(d). For example, if two shareholders in Corporation X are both attributable shareholders in the PCS applicant, to the extent that together they have the power to control Corporation X, Corporation X may be deemed an affiliate of the applicant.

211. Similarly, as under the SBA rules, we must consider spousal and other family relationships in determining whether an affiliation exists. Under the SBA rules for determining small business status, for example, members of the same family may be treated as though they were one person because they have an "identity of interest." 13 C.F.R. § 121.401(d). Likewise, in order to determine whether individuals are economically disadvantaged, the SBA rules governing eligibility for participation in the government's "section 8(a)" program for socially and economically disadvantaged small businesses have special provisions for attributing spousal interests. The latter rules provide generally that half of the jointly-owned interests of an applicant and his or her spouse must be attributed to the applicant for purposes of determining the applicant's net worth. See 13 C.F.R. § 124.106(a)(2)(i)(A)(1).

212. In the context of the auction eligibility rules at issue here, we begin by clarifying that our reason for considering spousal and kinship relationships is not to determine whether the spouse or other kin of a woman-owned applicant actually is controlling the applicant, thereby violating our eligibility rules for woman-owned businesses. As discussed above, our rules do not embody any presumptions concerning spousal control in that context.[191] Rather, our objective here is to ensure both that entities permitted to bid in the entrepreneurs' blocks are actually in need of special financial assistance and that otherwise ineligible entities do not circumvent the rules prohibiting entry by funding family members that purport to be eligible

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[190] SBA's size standard affiliation rules also provide that affiliations can arise in a variety of other scenarios, such as where one concern is dependent upon another for contracts and business, where firms share joint facilities, or have joint venture or franchise license agreements. To the extent we believe these rules may have general applicability in the context of our policies for broadband PCS, we shall codify them in our affiliate rules. We caution parties that issues relating to de facto control of the applicant (or parties with attributable interests in the applicant) could also arise under arrangements not expressly codified in the rules.

[191] See supra ¶ 189.

applicants.

213. In formulating these rules, we need to consider also that, as a practical matter, it will not be possible for us prior to the auctions to resolve all questions that pertain to the individual circumstances of particular applicants. Furthermore, if we determine subsequent to an auction that a winning bidder in fact was ineligible to bid because of spousal or kinship relationships, not only will authorization of service be delayed but, as discussed above, disqualified applicants may be subject to substantial penalties. In these circumstances, we think that the public interest requires that we endeavor, insofar as possible, to establish bright-line tests for determining when the financial interests of spouses and other kin should be attributed to the applicant.

214. We have decided that, for purposes of determining whether the financial limitations in our eligibility rules have been met, we will in every instance attribute the financial interests of an applicant's spouse to the applicant. This will resolve any concern that an applicant might transfer his or her assets to a spouse in order to satisfy the personal net worth or control restrictions that apply to eligible entities. For example, an applicant could not transfer stock or other assets to his or her spouse and thereby dispose of interests that, if held by the applicant, would render the applicant ineligible. Just as importantly, this approach will resolve any concern that an applicant might participate in bidding in the entrepreneurs' blocks by using the personal assets of an ineligible spouse, which would defeat entirely the objective of excluding very large entities from bidding in these blocks.

215. In adopting this rule, we fully recognize that instances could arise in which, if all factors were considered, attributing a spouse's financial interests to the applicant could lead to harsh results. As a general matter, however, we think it provides a workable bright-line standard that resolves fully our policy concerns and avoids undesirable ambiguity concerning the nature of our requirements. As in the SBA rules, however, one exception is clearly warranted; this affiliation standard would not apply if the applicant and his or her spouse are subject to a legal separation recognized by a court of competent jurisdiction. In calculating their personal net worth, investors in the applicant who are legally separated must, of course, still include their share of interests in community property held with a spouse.

216. As indicated above, circumstances could also arise in which other kinship relationships are used as a means to evade our eligibility requirements. Because we believe kinship relationships in many cases do not present the same potential for abuse that exists with spousal relationships, particularly in terms of the "identity of interests" that are likely to exist between the persons involved, we shall adopt a more relaxed standard for determining when kinship interests must be attributed to applicants. In this area, we shall follow the same standard that is applied by the SBA when interpreting its "identity of interest" rule described above. Specifically, an identity of interests between family members and applicants will be presumed to exist, but the presumption can be rebutted by showing that the family members are estranged, or that their family ties are remote, or that the family members are not closely related in business matters. See generally Texas-Capital Contractors, Inc. v. Abdnor, 933 F.2d

261 (5th Cir. 1990). For purposes of determining who is a family member under this rule, we shall use a definition that is identical to the definition of "immediate family member" in the SBA's rules, 13 C.F.R. § 124.100.

217. In appropriate cases, an applicant should be able to rebut the presumption regarding kinship affiliations with relative ease, simply by demonstrating that the applicant has no close relationship in business matters with the relevant family members. Of course, should such business relationships arise with a winning applicant after the auction, we might need to consider whether the applicant intended to circumvent the requirements of our eligibility rules. Our holding period rule, which, as discussed above, requires that winning bidders in the entrepreneurs' blocks maintain an ownership structure meeting our eligibility requirements for five years, will serve as an additional safeguard against possible abuses arising from kinship relationships.

VIII. CONCLUSION, PROCEDURAL MATTERS AND ORDERING CLAUSES

A. Conclusion

218. In fashioning rules for competitive bidding for broadband PCS licenses, we seek to promote the public policy goals set forth for us by Congress. We believe that the rules adopted in this Fifth Report and Order satisfy this objective. These rules should facilitate the rapid implementation of new broadband communications services through advanced technologies and efficient spectrum use, thus advancing the public interest by providing consumers with competitive and innovative wireless voice and data services and also fostering economic growth. The rules will allow for the public to recover a portion of the value of the public spectrum, and will promote access to broadband PCS services by consumers, producers and new entrants by ensuring that small businesses, rural telephone companies and businesses owned by minorities and women will have genuine opportunities to participate in the auctions and in the provision of service. We expect that the advent of PCS will benefit consumers by raising the overall level of competition in many already competitive segments of the telecommunications industry and providing competition in others for the first time, promote job creation in the communications and information sector of the domestic economy, and enhance productivity and efficiency in industry as a whole.

B. Final Regulatory Flexibility Analysis

219. Pursuant to the Regulatory Flexibility Act of 1980, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in PP Docket No. 93-253. Written comments on the IRFA were requested. The Commission's final analysis is as follows:

220. Need for and purpose of the action. This rule making proceeding was initiated to implement Section 309(j) of the Communications Act, as amended. The rules adopted

herein will carry out Congress's intent to establish a system of competitive bidding for broadband PCS licenses. The rules adopted herein also will carry out Congress's intent to ensure that small businesses, rural telephone companies, and businesses owned by women and minorities are afforded an opportunity to participate in the provision of spectrum-based services.

221. Issues raised in response to the IRFA. The IRFA noted that the proposals under consideration in the NPRM included the possibility of new reporting and recordkeeping requirements for a number of small business entities. No commenters responded specifically to the issues raised in the IRFA. We have made some modifications to the proposed requirements as appropriate.

222. Significant alternatives considered and rejected. All significant alternatives have been addressed in the Fifth Report and Order.

C. Ordering Clauses

223. Accordingly, IT IS ORDERED that Part 24 of the Commission's Rules is amended as set forth in the attached Appendix B.

224. IT IS FURTHER ORDERED that the rules changes made herein WILL BECOME EFFECTIVE 30 days after their publication in the Federal Register. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

COMMENTS AND REPLY COMMENTS FILED IN PP DOCKET NO. 93-253

Comments

1 Advanced Mobilcomm Technologies, Inc., and Digital Spread Spectrum Technologies, Inc.
2 James Aidala
3 Oye Ajayi-Obe
4 Alcatel Network Systems, Inc. (Alcatel)
5 AllCity Paging, Inc. (AllCity)
6 Alliance for Fairness and Viable Opportunity (Alliance for Fairness)
7 Alliance of Rural Area Telephone & Cellular Service Providers (ARAT)
8 Alliance Telecom, Inc.
9 Alpine Electronics and Communication (Alpine)
10 American Automobile Association (AAA)
11 American Mobile Satellite Corp. (AMSC)
12 American Mobile Telecommunications Association (AMTA)
13 American Personal Communications (APC)
14 The American Petroleum Institute (API)
15 American Wireless Communication Corporation (AWCC or American Wireless)
16 American Women in Radio and Television, Inc. (AWRT)
17 Ameritech
18 AMSC Subsidiary Corporation
19 Anchorage Telephone Utility (Anchorage)
20 Charles N. Andreae/Andreae & Associates, Inc.
21 John G. Andrikopoulos, et al.
22 Arch Communications Group, Inc. (Arch Communications)
23 Association for Maximum Service Telecasters & National Association of Broadcasters (MSTV/NAB)
24 Association of American Railroads (AAR)
25 Association of America's Public Television Stations (APTS)
26 Association of Independent Designated Entities (AIDE)
27 Association of Public-Safety Communications Officials International, Inc. (APCO)
28 AT&T
29 Baraff, Koerner, Olender & Hochberg, P.C.
30 Bechtel & Cole
31 Bell Atlantic Personal Communications, Inc. (Bell Atlantic)
32 BellSouth Corp., BellSouth Telecommunications, Inc., BellSouth Cellular Corp., and Mobile Communications Corporation of America (BellSouth)
33 Jeffrey T. Bergner
34 Art Boroughs
35 Van R. Boyette
36 D.B. Branch
37 Quentin L. Breen
38 Dennis C. Brown and Robert H. Schwaninger (Brown and Schwaninger)
39 Cablevision Industries, Comcast Corp., Cox Cable Communications, and Jones Intercable, Inc.
40 Calcell Wireless, Inc. (Calcell)
41 California Microwave, Inc. (California Microwave)
42 California Public Utilities Commission (CPUC)
43 Call-Her, L.L.C. (Call-Her)
44 Capitol Hill Management

45 Catapult Communications (Catapult)
46 Cellular Communications, Inc. (CCI)
47 Cellular Service, Inc. (CSI)
48 Cellular Settlement Groups
49 Cellular Telecommunications Industry Association (CTIA)
50 Cencall Communications Corp. (Cencall)
51 Century Communications Corp. (Century)
52 CFW Communications Corp., Denver and Ephrata Tel. and Tel. Co., and Lexington Tel. Co.
53 Chase Communications Corp. (Chase)
54 The Chase McNulty Group, Inc. (Chase McNulty)
55 Chickasaw Telephone Company (Chickasaw)
56 Citizens Utility Company (Citizens)
57 Coalition for Equity in Licensing
58 Cole, Raywid & Braverman
59 Wendy C. Coleman d/b/a WCC Cellular (WCC Cellular)
60 Comcast Corporation (Comcast)
61 Comsat Corporation (Comsat)
62 ComTech Associates, Inc. (Comtech)
63 Converging Industries
64 Cook Inlet Region, Inc. (Cook Inlet)
65 Corporate Technology Partners (CTP)
66 Council of 100
67 Cox Enterprises, Inc. (Cox)
68 Thomas Crema
69 Data Link Communications (Data Link)
70 Devsha Corporation
71 Dial Page, Inc.
72 Steven L. Dickerson
73 Abby Dilley
74 Diversified Cellular Communications (Diversified)
75 Domestic Automation Company (Domestic Automation)
76 Laura G. Dooley
77 John Dudinsky
78 Mark H. Duesenberg
79 John R. Duesenberg
80 Duncan, Weinberg, Miller & Pembroke, P.C.
81 Economics and Technology, Inc.
82 FiberSouth, Inc. (FiberSouth)
83 First Cellular of Maryland
84 Firstcom, Inc.
85 Fisher, Wayland, Cooper and Leader (Fisher Wayland)
86 David F. Gencarelli, Esq.
87 Janet B. Gencarelli
88 General Communications, Inc. (GCI or General Communications)
89 GEOTEK Industries, Inc. (GEOTEK)
90 Debra Gervasini
91 Martin Charles Gleyier
92 GTE Services Corp. (GTE)
93 GVNW, Inc./Management (GVNW)
94 John G. Heard
95 Hughes Communications Galaxy, Inc. & DirecTv, Inc. (DirecTv)
96 Hughes Transportation Management Systems (Hughes)
97 Independent Cellular Consultants

98 Independent Cellular Network, Inc.
99 Industrial Telecommunications Association, Inc.
100 Intelligent Vehicle-Highway Society of America
101 Interdigital Communications Corporation (Interdigital)
102 Iowa Network Serviees, Inc. (Iowa Network)
103 IVHS America
104 JAJ Cellular
105 Thomas J. Jasien
106 JBS & Associates/Shrader Real Estate
107 JMP Telecom Systems, Inc.
108 Andrea J. Johnson
109 Edward M. Johnson
110 E.F. Johnson Company
111 Jeff Johnston
112 Clair Joyce
113 Abraham Kye, et al.
114 Ward Leber & Eroca Daniel
115 Michael Lewis
116 Liberty Cellular, Inc. d/b/a Kansas Cellular (Liberty Cellular)
117 Lightcom International, Inc. (Lightcom)
118 Daniel R. Lindemann
119 Loral Qualcomm Satellite Services, Inc. (Loral)
120 Robert Lutz, et al.
121 Walter Lowman
122 LuxCel Group, Inc. (LuxCel)
123 John J. Mandler
124 McCaw Cellular Communications, Inc. (McCaw)
125 MCI Telecommunications Corporation (MCI)
126 MEBTEL, Inc.
127 Mercury Communications, L.C. (Mercury)
128 Millin Publications, Inc. (Millin)
129 Minnesota Equal Access Network Services, Inc. (Minnesota Equal Access)
130 Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF)
131 Minority PCS Coalition (Transworld Telecommunications Inc., Progressive Communications, Inc., Carl and Gail Davis and John Washington)
132 Motorola, Inc. (Motorola)
133 Motorola Satellite Communications, Inc. (Motorola Satcom)
134 George E. Murray
135 MW TV, Inc.
136 Law Offices of Richard S. Myers (Richard S. Myers)
137 National Association of Black-Owned Broadcasters, Inc. (NABOB)
138 National Association of Business and Educational Radio, Inc. (NABER)
139 National Association of Minority Telecommunications Executives and Companies (NAMTEC)
140 National Rural Telecom Association (NRTA)
141 National Telecommunications and Information Administration of the U.S. Department of Commerce (NTIA)
142 National Telephone Cooperative Association (NTCA)
143 Nextel Communications, Inc. (Nextel)
144 NYNEX Corporation (NYNEX)
145 M. Kathleen O'Conner
146 Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
147 Pacific Bell and Nevada Bell (PacBell)
148 Pacific Telecom Cellular, Inc. (Pacific Telecom Cellular)
149 PacTel Corporation (PacTel)

150 PacTel Paging and MidContinent Media (Joint Comments) (PacTel Paging)
151 PageMart, Inc. (PageMart)
152 Paging Network, Inc. (PageNet)
153 Palmer Communications, Inc. (Palmer)
154 Michael Pernecke
155 Raegene Pernecke
156 Personal Communications Network Services of New York
157 Jeffrey Peterson
158 Phase One Communications, Inc. (Phase One)
159 David Pines
160 PMN, Inc. (PMN)
161 PNC Cellular, Inc.
162 Point Communications Company (Point)
163 Primosphere Limited Partnership (Primosphere)
164 Quick Call Group (Quick Call)
165 Radio Telecom and Technology, Inc. (RTT)
166 RAM Mobile Data USA Limited Partnership (RAM)
167 RAY Communications, Inc.
168 Michael R. Rickman
169 Roamer One, Inc. (Roamer One)
170 Rochester Telephone Corp.
171 Rocky Mountain Telecommunications Association and Western Rural Telephone Association
172 Rural Cellular Association
173 Rural Cellular Corp.
174 Rural Electrification Administration, U.S. Department of Agriculture (REA)
175 Rural Telephone Company
176 Thomas Salmon
177 Santarelli, Smith & Carroccio
178 Michael Sauls
179 Securicor PMR Systems, Ltd. (Securicor)
180 Stephan C. Sloan
181 Small Business PCS Association
182 Small RSA Operators
183 Small Telephone Companies of Louisiana
184 Laquita Smallwood
185 Southwestern Bell Corporation (Southwestern Bell)
186 Sprint Corporation (Sprint)
187 Henry J. Staudinger
188 James F. Stern
189 Arlene F. Strege
190 Suite 12 Group
191 Systems Engineering, Inc.
192 Taxpayers Assets Project
193 Telephone and Data Systems, Inc. (TDS)
194 Telephone Association of Michigan (TAM)
195 Telephone Electronics Corp. (Telephone Electronics)
196 Telepoint Personal Communications, Inc (Telepoint).
197 The Telmarc Group and Telmarc Telecommunications, Inc. (Telmarc)
198 Telocator -- The Personal Communications Industry Association (Telocator)
199 Thumb Cellular Limited Partnership (Thumb)
200 Time Warner Telecommunications (Time Warner)
201 Tri-State Radio Company (Tri-State)
202 TRW, Inc. (TRW)

203 Unique Communications Concepts (Unique)
204 United Native American Telecommunications, Inc.
205 U.S. Intelco Networks, Inc. (U.S. Intelco)
206 U.S. Small Business Administration -- Chief Counsel for Advocacy (SBA)
207 U.S. Small Business Administration -- Associate Administrator for Procurement Assistance
208 U.S. Telephone Association (USTA)
209 Utilities Telecommunications Council (UTC)
210 Valley Management, Inc.
211 L. Brennan Van Dyke
212 Vanguard Cellular Systems, Inc. (Vanguard)
213 Richard L. Vega Group (Vega)
214 Venus Wireless, Inc. (Venus)
215 Leslie R. Walls
216 Western Wireless, Inc.
217 Windsong Communications, Inc. (Windsong)
218 Wireless Cable Association International, Inc.
219 Wireless Services Corporation (Wireless)
220 Wisconsin Wireless Communications Corporation (Wisconsin Wireless)
221 Ann Bradshaw Woods
222 William E. Zimsky

Reply Comments

1 Marlene Abe
2 Robert B. Adams (Commissioner, Office of General Services, State of New York)
3 Alcatel Network Systems, Inc.
4 AllCity Paging, Inc.
5 American Paging, Inc.
6 American Personal Communications
7 American Wireless Communication Corporation, Inc.
8 American 52 East
9 AMTECH Corporation (AMTECH)
10 John G. Andrikopoulos, Bent Elbow Corporation, et al.
11 Apex Welding, Inc. (Apex)
12 Arch Communications, Inc.
13 The Association of American Railroads
14 Association of Independent Designated Entities
15 AT&T
16 Bob Atkison
17 Bell Atlantic Personal Communications, Inc.
18 BellSouth Corporation
19 John L. Bergin
20 Kenneth B. Blair, Robert B. Blow, et al.
21 Town of Bridgewater, MA
22 Hayo Broeis
23 Cable & Wireless, Inc.
24 R. Jeffrey Cale
25 Robert R. Cale
26 Call-Her, L.L.C.
27 Capp Systems (IVDS) Inc.
28 Cellular Service, Inc.
29 Cellular Settlement Groups (Joint Comments)

30 Cellular Telecommunications Industry Association
31 CFW Communications Co., Denver and Ephrata Tel. and Tel. Co., and Lexington Tel. Co.
32 The Chillicothe Telephone Company
33 Citizens Utility Company
34 Edward Cline
35 Coalition for Equity in Licensing
36 Columbia Cellular Corporation
37 Comcast Corporation
38 Community Service Telephone Company
39 Cook Inlet Region, Inc.
40 DeKalb Telephone Cooperative, Inc.
41 Dell Telephone Cooperative, Inc.
42 Vernon L. Dennis
43 Dial Page, Inc.
44 Diversified Cellular Communications, Inc.
45 Michael J. Dowling
46 Ellipsat Corporation (Ellipsat)
47 Enakee Partnership
48 Marie S. Essex
49 Clemente S. Estrera, Jr.
50 Euro-Tech Enterprises, Inc.
51 Federal IVD
52 Fisher, Wayland, Cooper and Leader
53 Four Color Imports, Ltd. (Four Color)
54 Orren W. Fricke
55 Marguerite Geckler
56 General Communications, Inc. (GCI)
57 Genesis Investments
58 George Gower
59 GTE Service Corp.
60 Gulf Telephone Company
61 Mark D. Hafermann
62 Timothy Hartley
63 Dr. Renee Harwick
64 John G. Herd
65 Nathan D. Hodges
66 Troy Hodges
67 Home Box Office (HBO)
68 Adrian Hubbell
69 Hughes Communications Galaxy, Inc. and DirecTv, Inc.
70 Hughes Transportation Management Systems
71 Icon Communications Services
72 Independent Cellular Consultants (ICC)
73 Industrial Containers, Inc.
74 Industrial Telecommunications Association, Inc.
75 The Institute for Public Representation, Georgetown University Law Center, and Office of Communication of the United Church of Christ (Joint Comments) (UCC)
76 The Interagency Group
77 Interior Telephone Co.
78 International Small Satellite Organization
79 Iowa Network Services, Inc.
80 Cecil W. King
81 Kingswood Associates

82 Bernd K. L. Klopfer
83 J. Koyasako
84 Kuruvilla M. Kurien
85 Mani A. Kurien
86 Sosa Kurien
87 J. Bruce Llwellyn
88 Local Area Telecommunications, Inc.
89 Long Lines, Ltd.
90 Loral Qualcomm Satellite Services, Inc.
91 Manti Telephone Company
92 McCaw Cellular Communications, Inc.
93 McElroy Electronics Corporation
94 MCI Telecommunications Corporation
95 Metricom, Inc.
96 Marshall L. Morgan
97 William G. Morgan
98 Motorola, Inc.
99 Motorola Satellite Communications, Inc.
100 Mountain Home Publishing
101 Mukluk Telephone Co.
102 George E. Murray
103 National Association of Business and Educational Radio, Inc.
104 National Cable Television Association, Inc.
105 National Public Radio
106 National Rural Telephone Association
107 National Telephone Cooperative Association
108 Nextel Communications, Inc.
109 North American Interactive Partners I-IV
110 NYNEX Corporation
111 J.W. Oakes
112 Omnipoint Communications, Inc. (Omnipoint)
113 Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO)
114 Joseph A. Orlando
115 P & P Investments
116 Pacific Bell and Nevada Bell
117 Pacific Traders Group
118 PacTel Corporation
119 PacTel Paging and Midcontinent Media
120 PageMart, Inc.
121 Paging Network, Inc.
122 Palmer Communications, Inc.
123 PAN, Inc.
124 William W. Perry
125 Personal Network Services Corporation
126 Sidney E. Pinkston
127 Emma M. Pinkston
128 Pinpoint Communications, Inc.
129 PN Cellular, Inc. and its affiliates
130 PNM, Inc.
131 Price Communications Cellular
132 Denis A. Radefeld
133 Radiofone, Inc.
134 RAM Mobile Data USA Limited Partnership

135 Recourse Spectrum
136 Roamer One, Inc.
137 Roberts County Telephone Cooperative Association
138 Rochester Telephone Corporation
139 Rural Cellular Association
140 Ryberg Properties
141 Saco River Telegraph and Telephone Company
142 James J. Schneider
143 H.M. Schwartz
144 John Sheppard
145 Crystal Smith
146 Southwestern Bell
147 Spacedrive, Inc.
148 Sprint Corporation
149 David G. Stanley
150 Harry Stevens, Jr.
151 Sonia Stuart
152 Suite 12 Group
153 David F. Swain & Co.
154 Telephone and Data Systems, Inc.
155 Telephone Electronics Corporation
156 Telocator -- The Personal Communications Industry Association
157 William W. Thorton
158 Randy A. Toyoshima
159 TRW, Inc. (TRW)
160 Unique Communications Concepts
161 U.S. Intelco Networks, Inc.
162 United States Telephone Association
163 US West
164 The University of Texas System
165 Utilities Telecommunications Council
166 WCC Cellular
167 Bob Weber
168 Greg Winters
169 Wunschel Law Firm

APPENDIX B

FINAL RULES

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.204 of the Commission's Rules is amended by replacing references to "Section 24.305" and "Section 24.307" in subsections (f)(1) and (f)(2), respectively, with "§ 24.705" and "§ 24.707". These subsections will therefore read as follows:

§ 24.204 Cellular eligibility.

(f) Cellular Divestiture. * * *

* * * * *

(1) The broadband PCS applicant shall certify on its short-form auction application, filed in accordance with § 24.705, that it and all parties to the application will come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section.

(2) If such an applicant is a successful bidder, it must submit with its long-form application (see § 24.707) a signed statement describing its efforts to date and future plans to come into compliance with the limitations on common ownership of cellular and broadband PCS interests set forth in this section.

3. Part 24 is amended by adding a new subpart H consisting of §§ 24.701 through 24.720 to read as follows:

Subpart H - Competitive Bidding Procedures for Broadband PCS

Sec.

24.701 Broadband PCS subject to competitive bidding
24.702 Competitive bidding design for Broadband PCS licensing
24.703 Competitive bidding mechanisms
24.704 Withdrawal, default and disqualification penalties
24.705 Bidding application (FCC Form 175 and 175-S Short-Form)
24.706 Submission of upfront payments and down payments

24.707 Long-form applications
24.708 License grant, denial, default, and disqualification
24.709 Eligibility for licenses for frequency Blocks C and F
24.710 Limitation on licenses won at auction for frequency Blocks C and F
24.711 Installment payments for licenses for frequency Blocks C and F
24.712 Bidding credits for licenses for frequency Blocks C and F
24.713 Tax certificates
24.714 Eligibility for partitioned licenses
24.720 Definitions

Subpart H - Competitive Bidding Procedures for Broadband PCS

§ 24.701 Broadband PCS subject to competitive bidding.

Mutually exclusive initial applications to provide broadband PCS service are subject to competitive bidding procedures. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q will apply unless otherwise provided in this part.

§ 24.702 Competitive bidding design for Broadband PCS licensing.

(a) The Commission will employ the following competitive bidding designs when choosing from among mutually exclusive initial applications to provide broadband PCS service:

(1) Simultaneous multiple round auctions
(2) Sequential auctions

(b) The Commission may design and test alternative procedures. The Commission will announce by Public Notice before each auction the competitive bidding design to be employed in a particular auction.

(c) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount or percentage. Combinatorial bidding may be used with any type of auction design.

(d) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

§ 24.703 Competitive bidding mechanisms.

(a) Sequencing. The Commission will establish and may vary the sequence in which broadband PCS licenses will be auctioned.

(b) Grouping. In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) Reservation Price. The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) Minimum Bid Increments. The Commission will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(e) Stopping Rules. The Commission will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(f) Activity Rules. The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted one waiver of such rule during each auction stage.

(g) Suggested Minimum Bid. The Commission may establish suggested minimum bids on each license. Bids below the suggested minimum bid would count as activity under the activity rule only if no bids at or above the suggested minimum bid are received.

§ 24.704 Withdrawal, default and disqualification penalties.

(a) When the Commission conducts a simultaneous multiple round auction pursuant to § 24.702(a)(1), the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, who default on payments due after an auction closes, or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in paragraph (1) plus an additional penalty equal to three (3) percent of the

subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

(b) When the Commission conducts sequential oral auctions pursuant to § 24.702(a)(2), the Commission may modify the penalties set forth in subsection (a) above to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(1) If a bid is withdrawn before the Commission has declared the bidding to be closed for the license bid on, no bid withdrawal penalty will be assessed.

(2) If a bid is withdrawn after the Commission has declared the bidding to be closed for the license bid on, the penalty specified in paragraph (a)(2) will apply.

§ 24.705 Bidding application (FCC Form 175 and 175-S Short-Form).

All applicants to participate in competitive bidding for broadband PCS licenses must submit applications on FCC Forms 175 and 175-S pursuant to the provisions of §§ 1.2105 and 24.813 of this Chapter. The Commission will issue a Public Notice announcing the availability of broadband PCS licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This Public Notice also will specify the date on or before which applicants intending to participate in a broadband PCS auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the Forms, any filing fee that must accompany the application or any upfront payment that will need to be submitted, and the location where the application must be filed.

§ 24.706 Submission of upfront payments and down payments.

(a) Where the Commission uses simultaneous multiple round auctions or oral sequential auctions, bidders will be required to submit an upfront payment in accordance with § 1.2106 of Part 1 of this Chapter and § 24.711(a)(1) of this Part.

(b) Winning bidders in an auction must submit a down payment to the Commission in accordance with § 1.2107(b) of Part 1 of this Chapter and § 24.711(a)(2) of this Part.

§ 24.707 Long-form applications.

Each winning bidder will be required to submit a long-form application on FCC Form 401, as modified, within ten (10) business days after being notified that it is the winning bidder.

Applications on FCC Form 401 shall be submitted pursuant to the procedures set forth in Subpart I of this Part and § 1.2107(c) and (d) of Part 1 of this Chapter and any associated Public Notices. Only auction winners (and applicants seeking partitioned licenses pursuant to agreements with auction winners under § 24.714) will be eligible to file applications on FCC Form 401 for initial broadband PCS licenses in the event of mutual exclusivity between applicants filing Form 175. Winning bidders need not complete Schedule B to Form 401.

§ 24.708 License grant, denial, default, and disqualification.

(a) Except with respect to entities eligible for installment payments (see § 24.711 of this Part), each winning bidder will be required to pay the balance of its winning bid in a lump sum payment within five (5) business days following the award of the license. Grant of the license will be conditioned upon full and timely payment of the winning bid amount.

(b) A bidder who withdraws its bid subsequent to the close of bidding, defaults on a payment due or is disqualified will be subject to the penalties specified in § 1.2109 of Part 1 of this Chapter.

§ 24.709 Eligibility for licenses for frequency Blocks C and F.

(a) General Rule.

(1) No application is acceptable for filing and no license shall be granted for frequency Block C or frequency Block F, unless the applicant, together with its affiliates and persons holding interests in the applicant and their affiliates, have gross revenues of less than $125 million in each of the last two calendar years and total assets of less than $500 million at the time the applicant's short-form (Form 175) application is filed.

(2) No application is acceptable for filing and no license shall be granted for frequency Block C or frequency Block F, if, at the time the application is filed, the applicant (or person holding an interest in the applicant) is an individual and he or she (or affiliates) has $100 million or greater in personal net worth at the time the applicant's short-form (Form 175) application is filed.

(3) Any licensee awarded a license pursuant to this section (or pursuant to § 24.839(d)(2)) shall maintain its eligibility until at least five years from the date of initial license grant, except that increased gross revenues, increased total assets or personal net worth due to non-attributable equity investments (i.e., from sources whose revenues, total assets and personal net worth are not considered under paragraph (b)(4) of this section), debt financing, revenue from operations, business development or expanded service shall not be considered.

(b) Attribution and Aggregation of Gross Revenues, Total Assets, and Personal Net Worth.

(1) Except as specified in paragraphs (3) and (4), the gross revenues and total assets of the applicant (or licensee) and its affiliates, and other persons that hold interests in the applicant (or licensee) and their affiliates shall be considered on a cumulative basis and

aggregated for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency Block C or frequency Block F under this section.

(2) The personal net worth of individual applicants (or licensees) and other persons that hold interests in the applicant (or licensee), and their affiliates, if under the amount in paragraph (a)(2), shall not be considered for purposes of determining whether the applicant (or licensee) is eligible for a license for frequency Block C or frequency Block F under this section.

(3) Where an applicant (or licensee) is a consortium of small businesses, the gross revenues and total assets of each small business shall not be aggregated.

(4)(i) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered for purposes of determining financial eligibility so long as (A) such person holds no more than 25 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's (or licensee's) control group; and (B) the applicant (or licensee) has a control group that owns at least 25 percent of the applicant's (or licensee's) total equity and, if a corporation, holds at least 50.1 percent of the applicant's (or licensee's) voting interests.

(ii) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered for purposes of determining financial eligibility so long as (A) such person holds no more than 49.9 percent of the applicant's (or licensee's) passive equity and is not a member of the applicant's (or licensee's) control group; and (B) the applicant (or licensee) has a control group that consists entirely of members of minority groups and/or women and that owns at least 50.1 percent of the applicant's (or licensee's) total equity and, if a corporation, at least 50.1 percent of the applicant's (or licensee's) voting interests.

(iii) The gross revenues, total assets and personal net worth of a person that holds an interest in the applicant (or licensee) shall not be considered for purposes of determining financial eligibility so long as (A) such person owns no more than 25 percent of the applicant's (or licensee's) total equity, which shall include not more than 15 percent of the voting stock; (B) the applicant (or licensee) is a publicly traded corporation; and (C) the applicant (or licensee) has an eligible control group that holds at least 50.1 percent of the voting stock ,if a corporation, and at least 25 percent of the applicant's (or licensee's) equity.

Note: Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(c) Short-Form Application Certification; Long-Form Application Disclosure.

(1) All applicants for a license for frequency Block C or frequency Block F shall certify on its short-form application (Form 175) that they are eligible to bid on and obtain licenses in those blocks pursuant to this section.

(2) In addition to the requirements in subpart I, all applicants that are winning bidders on frequency Blocks C and F shall, in an exhibit to their long-form applications --

(i) identify each member of the applicant's control group, regardless of the size of the member's total interest in the applicant, and each member's minority group or gender classification, if applicable;

(ii) disclose the gross revenues and total assets of the applicant and its affiliates, and other persons that hold interests in the applicant and their affiliates (including all members of the applicant's control group), unless exempted under paragraph (b)(4); and

(iii) certify that the personal net worth of the applicant (if an individual), each affiliates and each person that hold an interests in the applicant is less than $100 million.

(d) Audits. Applicants and licensees claiming eligibility under this section shall be subject to random audits by the Commission.

(e) Definitions. The terms *affiliate, business owned by members of minority groups and women, consortium of small businesses, control group, gross revenues, members of minority groups, passive equity, personal net worth, publicly traded corporation, and total assets* used in this section are defined in § 24.720.

§ 24.710 Limitation on licenses won at auction for frequency Blocks C and F.

(a) No applicant may be deemed the winning bidder of more than 98 of the licenses available for frequency Blocks C and F. Any applicant who is the high bidder for more than 98 of the licenses available for frequency Blocks C and F shall be required to withdraw its bid(s) for a sufficient number of licenses to achieve compliance with this section and may be subject to bid withdrawal penalties under § 24.704.

(b) For purposes of subsection (a), licenses will be deemed to be won by the same bidder if an entity that controls or has the power to control any applicant that wins licenses at the auction, has the power to control any other applicant that wins licenses at the auction.

§ 24.711 Installment payments for licenses for frequency Blocks C and F.

(a) Except as provided in subsection (b), (c) and (d), an applicant that has $75 million or less in gross revenues in each of the preceding two calendar years and that is a winning bidder for frequency Blocks C or F in a BTA market other than the fifty largest markets and any eligible applicant that is a winning bidder for frequency Blocks C or F in one of the fifty largest BTA markets, may pay the full amount of its winning bid in installments as follows:

(1) Each eligible bidder shall pay an upfront payment of $0.015 per MHz per pop for the maximum number of licenses (in terms of MHz-pops) on which it intends to bid.

(2) Each winning bidder shall make a down payment equal to ten percent of their winning bids; a winning bidder shall bring its total amount on deposit with the Commission (including upfront payment) to five percent of its winning bids within five business days after the auction closes and the remainder of the down payment (five percent) shall be paid within five business days after the application required by § 24.809(b) is granted.

(3) Each eligible licensee shall pay the remainder of its winning bids in installment payments with (i) interest imposed based on the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted, plus 2.5 percent; (ii) interest-only payments for the first year; and (iii) principal and interest payments amortized over the remaining nine years of the license.

(4) For purposes of determining whether an applicants has $75 million or less in gross revenues, gross revenues shall be attributed to the applicant and aggregated as provided in § 24.709(b), except that § 24.709(b)(4)(iii) shall not apply.

(b) An applicant that qualifies as a business owned by members of minority groups and/or women may pay the full amount of its winning bid in installments in the same manner as in paragraphs (a)(1) and (a)(2), except that interest-only payments may be paid for the first three years and interest shall be paid at the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted.

(c) An applicant that qualifies as a small business or as a consortium of small businesses may pay the full amount of its winning bid in installments in the same manner as in paragraphs (a)(1) and (a)(2), except that interest-only payments may be paid for the first two years.

(d) An applicant that qualifies as a small business owned by members of minority groups and/or women or as a consortium of small businesses owned by members of minority groups and/or women may pay the full amount of its winning bid in installments in the same manner as in paragraphs (a)(1) and (a)(2), except that interest-only payments may be paid for the first five years and interest shall be paid at the rate for ten-year U.S. Treasury obligations applicable on the date the license is granted.

(e) Unjust Enrichment.

(1) If a licensee that utilizes installment financing under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for installment payments, the licensee must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval.

(2) If a licensee that utilizes installment financing under this section seeks to make any change in ownership structure that would result in the licensee losing eligibility for installment payments, the licensee shall first seek Commission approval and must make full payment of the remaining unpaid principal and any unpaid interest accrued through the date of assignment or transfer as a condition of approval. Increases in gross revenues or total assets that result from equity investments that are not attributable to the licensee under § 24.709(b)(4), revenues from operations, business development or expanded service shall not be considered changes in ownership structure under this paragraph.

(3) If a licensee seeks to make any change in ownership that would result in the licensee qualifying for a less favorable installment plan under subsections (a), (b) or (c), the licensee shall seek Commission approval and must adjust its payment plan to reflect its new eligibility status under subsections (a), (b) or (c). A licensee may not switch its payment plan to a more favorable plan.

§ 24.712 Bidding credits for licenses for frequency Blocks C and F.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses may use a bidding credit of ten percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a business owned by members of minority groups and/or women may use a bidding credit of fifteen percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as a small business owned by members of minority groups and/or women or a consortium of small business owned by members of minority groups and/or women may use a bidding credit of twenty-five percent to lower the cost of its winning bid.

(d) Unjust Enrichment.

(1) If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity not meeting the eligibility standards for bidding credits or seeks to make any other change in ownership that would result in the licensee no longer qualifying for bidding credits under this section, the licensee must seek Commission approval and reimburse the government for the amount of the bidding credit as a condition of the approval of such assignment, transfer or other ownership change.

(2) If a licensee that utilizes a bidding credit under this section seeks to assign or transfer control of its license to an entity meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 24.713 Tax certificates.

(a) Any non-controlling initial investor in a business owned by members of minority groups and/or women and who provides "start-up" financing, which allows such business to acquire a broadband PCS license(s), and any non-controlling investor who purchases an interest in a broadband PCS license held by a business owned by members of minority groups and/or

women within the first year after license issuance, may, upon the sale of such investment or interest, request from the Commission a tax certificate.

Note: For purposes of this subsection, *non-controlling investor* means any person who is not part of the control group of a business owned by members of minority groups and/or women as defined in § 24.720(k).

(b) Any broadband PCS licensee who assigns or transfers control of its license to a business owned by members of minority groups and/or women may request that the Commission issue the licensee a tax certificate. Any licensee that obtains a broadband PCS license through the benefit of a tax certificates under this subsection shall not assign or transfer control of its license within one year of its license grant date, unless such assignee or transferee qualifies as a business owned by members of minority groups and/or women, which shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

(c) Any licensee in the Domestic Public Cellular Radio Telecommunications Service who assigns or transfers control of its cellular license(s) to a business owned by members of minority groups and/or women may request that the Commission issue the licensee a tax certificate. Such tax certificates will only be issued if the principal purpose of the assignment or transfer of control is to allow the cellular licensee to become eligible for a broadband PCS license(s) beyond the limitations imposed on the cellular licensee by § 24.204 of this Part. Any licensee that obtains a cellular license through the benefit of a tax certificates under this subsection shall not assign or transfer control of its license within one year of its license grant date, unless such assignee or transferee qualifies as a business owned by members of minority groups and/or women, which shall not assign or transfer control of the license within one year of the grant date of the assignment or transfer.

§ 24.714 Eligibility for partitioned licenses.

(a) Notwithstanding § 24.202 of this Part, an applicant that is a rural telephone company, as defined in § 24.720(e), may be granted a broadband PCS license that is geographically partitioned from a separately licensed MTA or BTA, so long as the MTA or BTA applicant or licensee has voluntarily agreed (in writing) to partition a portion of the license to the rural telephone company.

(b) If partitioned licenses are being applied for in conjunction with a license(s) to be awarded through competitive bidding procedures --

(1) the applicable procedures for filing short-form applications and for submitting upfront payments and down payments contained in this Part and Part 1 of this Chapter shall be followed by the applicant, who must disclose as part of its short-form application all parties to agreement(s) with or among rural telephone companies to partition the license pursuant to this section, if won at auction (see 47 CFR § 1.2105(a)(2)(viii));

(2) each rural telephone company that is a party to an agreement to partition the license shall file a long-form application for its respective, mutually agreed-upon geographic area together with the application for the remainder of the MTA or BTA filed by the auction winner.

(c) If the partitioned license is being applied for as a partial assignment of the MTA or BTA license following grant of the initial license, request for authorization for partial assignment of a license shall be made pursuant to § 24.839 of this Part.

(d) Each application for a partitioned area (long-form initial application or partial assignment application) shall contain a partitioning plan that must propose to establish a partitioned area to be licensed that meets the following criteria:

(1) conforms to established geopolitical boundaries (such as county lines);
(2) includes the wireline service area of the rural telephone company applicant; and
(3) is reasonably related to the rural telephone company's wireline service area.

Note: A partitioned service area will be presumed to be reasonably related to the rural telephone company's wireline service area if the partitioned service area contains no more than twice the population overlap between the rural telephone company's wireline service area and the partitioned area.

(e) Each licensee in each partitioned area will be responsible for meeting the construction requirements in its area (see § 24.203).

§ 24.720 Definitions.

(a) Scope. The definitions in this section apply to §§ 24.709-24.715 of this subpart, unless otherwise specified in those sections.

(b) Small Business; Consortium of Small Businesses.

(1) A *small business* is an entity that (i) together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years; (ii) has no attributable investor or affiliate that has a personal net worth of $40 million or more; (iii) has a control group all of whose members and affiliates are considered in determining whether the entity meets the $40 million annual gross revenues and personal net worth standards; and (iv) such control group holds 50.1 percent of the entity's voting interest, if a corporation, and at least 25 percent of the entity's equity on a fully diluted basis, except that a business owned by members of minority groups and/or women (as defined in subsection (c)) may also qualify as a small business if a control group that is 100 percent composed of members of minority groups and/or women holds 50.1 percent of the entity's voting interests, if a corporation, and 50.1 percent of the entity's total equity on a fully diluted basis and no single other investor holds more than 49.9 percent of passive equity in the entity. Ownership

interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(2) For purposes of determining whether an entity meets the $40 million gross revenues and $40 million personal net worth standards in paragraph (1), gross revenues and personal net worth shall be attributed to the entity and aggregated as provided in § 24.709(b), except that § 24.709(b)(4)(iii) shall not apply.

(3) A *small business consortium* is a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraph (1).

(c) Business Owned by Members of Minority Groups and/or Women. A *business owned by members of minority groups and/or women* is an entity (i) that has a control group composed 100 percent of members of minority groups and/or women who are United States Citizens, and (ii) such control group owns and holds 50.1 percent of the voting interests, if a corporation, and (A) owns and holds 50.1 percent of the total equity in the entity, provided that all other investors hold passive interests; or (B) holds 25 percent of the total equity in the entity, provided that no single other investor holds more than 25 percent passive equity interests in the entity. Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised, except that the such agreements may not be used to appear to terminate or divest ownership interests before they actually do so.

(d) Small Business Owned by Members of Minority Groups and/or Women; Consortium of Small Businesses Owned by Members of Minority Groups and/or Women. A *small business owned by members of minority groups and/or women* is an entity that meets the definitions in both subsections (b) and (c). A *consortium of small businesses owned by members of minority groups and/or women* a conglomerate organization formed as a joint venture between mutually-independent business firms, each of which individually satisfies the definition of a small business in paragraph (b)(1) and subsection (c).

(e) Rural Telephone Company. A *rural telephone company* is a local exchange carrier having 100,000 or fewer access lines, including all affiliates.

(f) Gross Revenues. *Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited quarterly financial statements for the relevant period.

(g) Total Assets. *Total assets* shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of all property owned by an entity,

whether real or personal, tangible or intangible, as evidenced by the most recent audited quarterly financial statements.

(h) Personal Net Worth. *Personal net worth* shall mean the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owed by the individual in his individual capacity or as a joint obligor.

(i) Members of Minority Groups. *Members of minority groups* includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(j) Passive Equity. *Passive equity* shall mean (i) for corporations, non-voting stock or stock that includes no more than five percent of the voting equity; (ii) for partnerships, joint ventures and other non-corporate entities, limited partnership interests and similar interests that do not afford the power to exercise control of the entity.

(k) Control Group. A *control group* is an entity, or a group of individuals or entities that possesses de jure control and de facto control of an applicant or licensee, and as to which the applicant's or licensee's charters, bylaws, agreements and any other relevant documents (and amendments thereto) provide (i) that the entity and/or its members own unconditionally at least 50.1 percent of the total voting interests of a corporation; (ii) that the entity and/or its members receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock of a corporation; (iii) that, in the event of dissolution or liquidation of a corporation, the entity and/or its members are entitled to receive 100 percent of the value of each share of stock in its possession and a percentage of the retained earnings of the concern that is equivalent to the amount of equity held in the corporation; and (iv) that the entity and/or its members have the right to receive dividends, profits and regular and liquidating distributions from the business in proportion to its interest in the total equity of the applicant or licensee.

> Note: Voting control does not always assure de facto control, such as, for example, when the voting stock of the control group is widely dispersed (see, e.g., § 24.270(l)(2)(iii)).

(l) Affiliate. (1) An individual or entity is an *affiliate* of (a) an applicant or (b) a person holding an attributable interest in an applicant under § 24.709 (both referred to herein as "the applicant") if such individual or entity --

(i) directly or indirectly controls or has the power to control the applicant , or

(ii) is directly or indirectly controlled by the applicant, or

(iii) is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) has an "identity of interest" with the applicant.

(2) Nature of *control* in determining affiliation.

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example. An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example. In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

Example. Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(i) Spousal Affiliation. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the

United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(ii) Kinship Affiliation. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that (A) the family members are estranged, (B) the family ties are remote, or (C) the family members are not closely involved with each other in business matters.

Example: A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) Affiliation through stock ownership.

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1. If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in

company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2. If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3. If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) Affiliation under voting trusts.

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) Affiliation through contractual relationships. Affiliation generally arises where once concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern .

(10) Affiliation under joint venture arrangements.

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for

joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(m) Publicly Traded Corporation. A *publicly traded corporation* is a business entity organized under the laws of the United States whose shares, debt or other ownership interests are traded on an organized securities exchange within the United States.

4. Part 24 is amended by adding a new subpart I consisting of §§ 24.801 through 24.844 to read as follows:

Subpart I -- Interim Application, Licensing, and Processing Rules for Broadband PCS

Sec.

24.801 [Reserved]
24.802 [Reserved]
24.803 Authorization Required
24.804 Eligibility
24.805 Formal and Informal Applications
24.806 Filing of Broadband PCS Applications; Fees; Number of Copies
24.807 [Reserved]
24.808 [Reserved]
24.809 Standard Application Forms and Permissive Changes or Minor Modifications for the Broadband Personal Communications Services
24.810 [Reserved]
24.811 Miscellaneous Forms
24.812 [Reserved]
24.813 General Application Requirements
24.814 [Reserved]
24.815 Technical Content of Applications
24.816 Station Antenna Structures
24.817 [Reserved]
24.818 [Reserved]
24.819 Waiver of Rules
24.820 Defective Applications
24.821 Inconsistent or Conflicting Applications
24.822 Amendment of Application to Participate in Auction for Licenses in the Broadband Personal Communications Services filed on FCC Form 175

24.823 Amendment of Application for Licenses in the Broadband Personal Communications Services (other than applications filed on FCC Form 175)
24.824 [Reserved]
24.825 Application for Temporary Authorizations
24.826 Receipt of Application; Applications in the Broadband Personal Communications Services filed on FCC Form 175 and other Applications in the Broadband Personal Communications Services
24.827 Public Notice Period
24.828 Dismissal and Return of Applications
24.829 Ownership Changes and Agreements to Amend or to Dismiss Applications or Pleadings
24.830 Opposition to Applications
24.831 Mutually Exclusive Applications
24.832 Consideration of Applications
24.833 [Reserved]
24.834 [Reserved]
24.835 [Reserved]
24.836 [Reserved]
24.837 [Reserved]
24.838 [Reserved]
24.839 Transfer of Control or Assignment of License
24.840 [Reserved]
24.841 [Reserved]
24.842 [Reserved]
24.843 Extension of Time to Complete Construction
24.844 Termination of Authorization

Subpart I -- Interim Application, Licensing, and Processing Rules for Broadband PCS

§ 24.801 [Reserved]

§ 24.802 [Reserved]

§ 24.803 Authorization required.

No person shall use or operate any device for the transmission of energy or communications by radio in the services authorized by this part except as provided in this part.

§ 24.804 Eligibility.

(a) General. Authorizations will be granted upon proper application if:

(1) The applicant is qualified under all applicable laws and Commission regulations, policies and decisions;

(2) There are frequencies available to provide satisfactory service; and

(3) The public interest, convenience or necessity would be served by a grant.

(b) Alien ownership. A broadband PCS authorization to provide Commercial Mobile Radio Service may not be granted to or held by:

(1) Any alien or the representative of any alien.

(2) Any corporation organized under the laws of any foreign government.

(3) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or any corporation organized under the laws of a foreign country.

(4) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

A broadband PCS authorization to provide Private Mobile Radio Service may not be granted to or held by a foreign government or a representative thereof.

§ 24.805 Formal and informal applications.

(a) Except for an authorization under any of the conditions stated in Section 308(a) of the Communications Act of 1934 (47 U.S.C. § 308(a)), the Commission may grant the following authorizations only upon written application received by it: station licenses; modifications of licenses; renewals of licenses; transfers and assignments of station licenses, or any right thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application shall be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this Part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 24.806 Filing of Broadband PCS applications; Fees; Numbers of copies.

(a) As prescribed by §§ 24.705, 24.707 and 24.809 of this part, standard formal application forms applicable to broadband PCS may be obtained from either:

(1) Federal Communications Commission, Washington, DC 20554; or
(2) by calling the Commission's Forms Distribution Center, (202) 632-3676.

(b) Applications to participate in competitive bidding for broadband PCS service must be filed on FCC Form 175 in accordance with the rules in § 24.705 and Part 1, Subpart Q. In the event of mutual exclusivity between applicants filing FCC Form 175, only auction winners will be eligible to file subsequent long-form applications on FCC Form 401 to provide broadband PCS service. Mutually exclusive applications filed on FCC Form 175 are subject to competitive bidding under those rules. Broadband PCS applicants filing FCC Form 401 need not complete Schedule B.

(c) All applications for broadband PCS licenses (other than applications to participate in competitive bidding filed on FCC Form 175) shall be submitted for filing to:

Federal Communications Commission
Washington, DC 20554
Attention: Broadband PCS Processing Section

Applications requiring fees as set forth at Part 1, Subpart G of this chapter must be filed in accordance with § 0.401(b).

(d) All correspondence or amendments concerning a submitted application shall clearly identify the name of the applicant, applicant identification number or Commission file number (if known) or station call sign of the application involved, and may be sent directly to the Common Carrier Bureau, Broadband PCS Processing Section.

(e) Except as otherwise specified, all applications, amendments, correspondence, pleadings and forms (including FCC Form 175) shall be submitted on one original paper copy and with three microfiche copies, including exhibits and attachments thereto, and shall be signed as prescribed by § 1.743. Filings of five pages or less are exempt from the requirement to submit on microfiche, as are emergency filings such as letters requesting special temporary authority. Those filing any amendments, correspondence, pleadings and forms must

simultaneously submit the original hard copy which must be stamped "original". In addition to the original hard copy, those filing pleadings, including pleadings under § 1.2108 of the Rules, shall also submit two paper copies as provided in § 1.51 of the Rules.

(1) Microfiche copies. Each microfiche copy must be a copy of the signed original. Each microfiche copy shall be a 148mm X 105mm negative (clear transparent characters appearing on an opaque background) at 24X to 27X reduction for microfiche or microfiche jackets. One of the microfiche sets must be a silver halide camera master or a copy made on silver halide film such as Kodak Direct Duplicatory Film. The microfiche must be placed in paper microfiche envelopes and submitted in a B6 (125 mm x 176 mm) or 5 x 7.5 inch envelope. All applicants must leave Row "A" (the first row for page images)of the first fiche blank for in-house identification purposes. Each microfiche copy of pleadings shall include:

(i) The month and year of the document;

(ii) the name of the document;

(iii) The name of the filing party;

(iv) The file number, applicant identification number, and call sign, if assigned;

(v) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

Abbreviations may be used if they are easily understood.

(2) All applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The type of application (e.g., 30 MHz MTA, 30 MHz BTA, 10 MHz BTA);

(iii) The month and year of the document;

(iv) The name of the document;

(v) The file number, applicant identification number, and call sign, if assigned; and

(vi) The identification number and date of the Public Notice announcing the auction in response to which the application was filed (if applicable).

§ 24.807 [Reserved]

§ 24.808 [Reserved]

§ 24.809 Standard application forms and permissive changes or minor modifications for the Broadband Personal Communications Service.

(a) Applications to participate in competitive bidding for broadband PCS licenses must be filed on FCC Forms 175 and 175-S.

(b) Subsequent application by auction winners or non-mutually exclusive applicants for broadband PCS licenses under Part 24. FCC Form 401 ("Application for New or Modified

Common Carrier Radio Station Under Part 22") shall be submitted by each auction winner for each broadband PCS license applied for on FCC Form 175. In the event that mutual exclusivity does not exist with respect to a license identified on an applicant's FCC Form 175, the Commission will so inform the applicant and the applicant will also file FCC Form 401. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 24.11. Broadband PCS applicants filing FCC Form 401 need not complete Schedule B.

(c) Extensions of time and reinstatement. When a licensee cannot complete construction in accordance with the provisions of § 24.203, a timely application for extension of time (FCC Form 489) must be filed.

(d) License for mobile subscriber station -- These stations are considered to be associated with and covered by the authorization issued to the carrier serving the land mobile station. No additional authorization is required.

§ 24.810 [Reserved]

§ 24.811 Miscellaneous forms.

(a) Licensee qualifications. FCC Form 430 ("Common Carrier and Satellite Radio Licensee Qualifications Report") shall be filed by broadband Personal Communications Service licensees only as required by Form 490 (Application for Assignment or Transfer of Control Under Part 22).

(b) Renewal of station license. Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed.

§ 24.812 [Reserved]

§ 24.813 General application requirements.

(a) Each application (including applications filed on Forms 175 and 401) for a broadband PCS license or for consent to assign or transfer control of a broadband PCS license shall disclose fully the real party or parties in interest and must include in an exhibit the following information:

(1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key

management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.

(2) A list of any party which holds a five percent or more interest in the applicant, or any entity in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant (e.g., If Company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).

(3) A list of the names, addresses, citizenship and principal business of any person holding five percent or more of each class of stock, warrants, options or debt securities together with the amount and percentage held, and the name, address, citizenship and principal place of business of any person on whose account, if other than the holder, such interest is held. If any of these persons are related by blood or marriage, include such relationship in the statement.

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application.

(b) Each application for a broadband PCS license must:

(1) Submit the information required by the Commission's Rules, requests and application forms;

(2) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter;

(3) Show compliance with and make all special showings that may be applicable;

(c) Where documents, exhibits, or other lengthy showings already on file with the Commission contain information which is required by an application form, the application may specifically refer to such information, if:

(1) The information previously filed is over one A4 (21 cm x 29.7 cm) or 8.5 x 11 inch (21.6 cm x 27.9 cm) page in length, and all information referenced therein is current and accurate in all significant respects under § 1.65 of this chapter; and

(2) The reference states specifically where the previously filed information can actually be found, including mention of:

(i) The station call sign or application file number whenever the reference is to station files or previously filed applications; and

(ii) The title of the proceeding, the docket number, and any legal citations, whenever the reference is to a docketed proceeding.

However, questions on an application form which call for specific technical data, or which can be answered by a "yes" or "no" or other short answer shall be answered as appropriate and shall not be cross-referenced to a previous filing.

(d) In addition to the general application requirements of Subpart F and §§ 1.2105, 24.813 and 24.815 of this part, applicants shall submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by these rules; and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee or licensee to enable it to determine whether a radio authorization should be granted, denied or revoked.

(e) Except when the Commission has declared explicitly to the contrary, an informational requirement does not in itself imply the processing treatment of decisional weight to be accorded the response.

(f) All applicants (except applicants filing FCC Form 175) are required to indicate at the time their application is filed whether or not a Commission grant of the application may have a significant environmental impact as defined by § 1.1307 of the Commission's rules. If answered affirmatively, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed prior to construction. See § 1.1312 of this chapter. All broadband PCS licensees are subject to a continuing obligation to determine whether subsequent construction may have a significant environmental impact prior to undertaking such construction and to otherwise comply with § 1.1301 et seq. of the Commission's Rules. See § 1.1312.

§ 24.814 [Reserved]

§ 24.815 Technical content of applications; maintenance of list of station locations.

(a) All applications required by this part shall contain all technical information required by the application forms or associated Public Notice(s). Applications other than initial applications for a broadband PCS license must also comply with all technical requirements of the rules governing the broadband PCS (see Subparts C and E of this Part as appropriate). The following paragraphs describe a number of general technical requirements.

(b) Each application (except applications for initial licenses filed on Form 175) for a license for broadband PCS must comply with the provisions of §§ 24.229-24.238 of the Commission's Rules.

(c)-(i) [Reserved]

(j) The location of the transmitting antenna shall be considered to be the station location. Broadband PCS licensees must maintain a current list of all station locations, which must describe the transmitting antenna site by its geographical coordinates and also by conventional

reference to street number, landmark, or the equivalent. All such coordinates shall be specified in terms of degrees, minutes, and seconds to the nearest second of latitude and longitude.

§ 24.816 Station Antenna Structures.

(a) Unless the broadband PCS licensee has received prior approval from the FCC, no antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 61 m (200 feet) above ground level at its site.

(b) Unless the broadband PCS licensee has received prior approval from the FCC, no antenna structure that is located either at an airport or heliport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement, or at an airport or heliport under construction that is the subject of a notice or proposal on file with the FAA and, except for military airports, it is clearly indicated that the airport will be available for public use, or at an airport or heliport that is operated by the armed forces of the United States, or at a place near any of these airports or heliports, may be higher than:

(1) 1 m above the airport elevation for each 100 m from the airport runway longer than 1 km within 6.1 km of the antenna structure.

(2) 2 m above the airport elevation for each 100 m from the nearest runway shorter than 1 km within 3.1 km of the antenna structure.

(3) 4 m above the airport elevation for each 100 m from the nearest landing pad within 1.5 km of the antenna structure.

(c) A broadband PCS station antenna structure no higher than 6.1 m (20 feet) above ground level at its site or no higher than 6.1 m above any natural object or existing manmade structure, other than an antenna structure, is exempt from the requirements of paragraphs (a) and (b) of this section.

(d) Further details as to whether an aeronautical study and/or obstruction marking and lighting may be required, and specifications for obstruction marking and lighting, are contained in Part 17 of the FCC Rules, Construction, Marking and Lighting of Antenna Structures. To request approval to place an antenna structure higher than the limits specified in paragraphs (a), (b), and (c) of this section, the licensee must notify the Federal Aviation Administration (FAA) on FAA Form 7460-1 and the FCC on FCC Form 854.

§§ 24.817-24.818 [Reserved]

§ 24.819 Waiver of rules.

(a) Requests for waiver.

(1) A waiver of these rules may be granted upon application or by the Commission on its own motion. Requests for waivers shall contain a statement of reasons sufficient to justify a waiver. Waivers will not be granted except upon an affirmative showing:

(i) That the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest; or

(ii) That the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

(2) If the information necessary to support a waiver request is already on file, the applicant may cross-reference to the specific filing where it may be found.

(b) Denial of waiver, alternate showing required. If a waiver is not granted, the application will be dismissed as defective unless the applicant has also provided an alternative proposal which complies with the Commission's rules (including any required showings).

§ 24.820 Defective applications.

(a) Unless the Commission shall otherwise permit, an application will be unacceptable for filing and will be returned to the applicant with a brief statement as to the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, execution or other matters of a formal character; or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information or other requirements.

See also § 1.2105 of the Commission's Rules.

(b) Some examples of common deficiencies which result in defective applications under paragraph (a) of this section are:

(1) The application is not filled out completely and signed;

(2)-(4) [Reserved]

(5) The application (other an application filed on FCC Form 175) does not include an environmental assessment as required for an action that may have a significant impact upon the environment, as defined in § 1.1307 of this chapter.

(6) [Reserved]

(7) The application is filed prior to the Public Notice issued under § 24.705 of this part announcing the application filing date for the relevant auction or after the cutoff date prescribed in that Public Notice.

(c) [Reserved]

(d) If an applicant is requested by the Commission to file any documents or any supplementary or explanatory information not specifically required in the prescribed application form, a failure to comply with such request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 24.821 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, its successor or assignee, or on behalf or for the benefit of the same applicant, its successor or assignee.

§ 24.822 Amendment of application to participate in auction for licenses in the Broadband Personal Communications Services filed on FCC Form 175.

(a) The Commission will provide bidders a limited opportunity to cure defects in FCC Form 175 specified herein except for failure to sign the application and to make certifications, defects which may not be cured. See also § 1.2105 of the Commission's Rules.

(b) In the broadband PCS, the only amendments to FCC Form 175 which will be permitted are minor amendments to correct minor errors or defects such as typographical errors. All other amendments to FCC Form 175, such as changes in the information supplied pursuant to § 24.813(a) or changes in the identification of parties to bidding consortia, will be considered to be major amendments. An FCC Form 175 which is amended by a major amendment will be considered to be newly filed and cannot be resubmitted after applicable filing deadlines. See also § 1.2105 of the Commission's Rules.

§ 24.823 Amendment of applications for licenses in the Broadband Personal Communications Services (other than applications filed on FCC Form 175).

(a) Amendments as of right. A pending application may be amended as a matter of right if the application has not been designated for hearing.

(1) Amendments shall comply with § 24.829, as applicable; and

(2) Amendments which resolve interference conflicts or amendments under § 24.829 may be filed at any time.

(b) The Commission or the presiding officer may grant requests to amend an application designated for hearing only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) Major amendments, minor amendments. The Commission will classify all amendments as minor except in the cases listed below. An amendment shall be deemed to be a major amendment subject to § 24.827 if it proposes a substantial change in ownership or control.

(d) If a petition to deny (or other formal objection) has been filed, any amendment, request for waiver or other written communication shall be served on the petitioner, unless waiver of this requirement is granted pursuant to paragraph (e) of this section. See also § 1.2108 of the Commission's Rules.

(e) The Commission may waive the service requirements of paragraph (d) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome.

(f) Any amendment to an application shall be signed and shall be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

(g) An application will be considered to be a newly-filed application if it is amended by a major amendment (as defined in this section), except in the following circumstances:

(1) [Reserved]

(2) [Reserved]

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(4) [Reserved]

(5) The amendment corrects typographical transcription or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts;

§ 24.824 [Reserved]

§ 24.825 Application for temporary authorizations.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 24.805 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, at least 10 days prior

to the expiration date of the existing temporary authorization. The Commission may accept a late-filed request upon due showing of sufficient reasons for the delay in submitting such request.

(b) Special temporary authorizations may be granted without regard to the 30-day public notice requirements of § 24.827(b) when:

(1) The authorization is for a period not to exceed 30 days and no application for regular operation is contemplated to be filed;

(2) The authorization is for a period not to exceed 60 days pending the filing of an application for such regular operation;

(3) The authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The authorization is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(c) Temporary authorizations of operation not to exceed 180 days may be granted under the standards of Section 309(f) of the Communications Act where extraordinary circumstances so require. Extensions of the temporary authorization for a period of 180 days each may also be granted, but the applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(d) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the president or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant radio station authorizations and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war requiring such action, without the filing of formal applications.

§ 24.826 Receipt of application; Applications in the Broadband Personal Communications Services filed on FCC Form 175 and other applications in the Broadband Personal Communications Services.

(a) All applications for the initial provision of broadband PCS must be submitted on FCC Forms 175 and 175-S. Mutually exclusive initial applications in the broadband Personal Communications Services are subject to competitive bidding. FCC Form 401 ("Application for New or Modified Common Carrier Radio Station Under Part 22") must be submitted by

each winning bidder for each broadband PCS license for which application was made on FCC Form 175. In the event that mutual exclusivity does not exist between applicants for a broadband PCS license that have filed FCC Form 175, the sole applicant will be required to file FCC Form 401. The aforementioned Forms 175, 175-S, and 401 are subject to the provisions of 47 CFR Part 1, Subpart Q ("Competitive Bidding Proceedings") and Subpart H of this Part. Blanket licenses are granted for each market frequency block. Applications for individual sites are not needed and will not be accepted. See § 24.11.

(b) Applications received for filing are given a file number. The assignment of a file number to an application is merely for administrative convenience and does not indicate the acceptance of the application for filing and processing. Such assignment of a file number will not preclude the subsequent return or dismissal of the application if it is found to be not in accordance with the Commission's Rules.

(c) Acceptance of an application for filing merely means that it has been the subject of a preliminary review as to completeness. Such acceptance will not preclude the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules. (See § 24.813 for additional information concerning the filing of applications.)

§ 24.827 Public Notice Period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of all applications and major amendments thereto;

(2) Significant Commission actions concerning applications listed as acceptable for filing;

(3) Information which the Commission in its discretion believes of public significance. Such notices are intended solely for the purpose of informing the public and do not create any rights in an applicant or any other person.

(4) Special environmental considerations as required by Part 1 of this chapter.

(b) The Commission will not grant any application until expiration of a period of thirty (30) days following the issuance date of a public notice listing the application, or any major amendments thereto, as acceptable for filing; provided, however, that the Commission will not grant an application filed on Form 401 filed either by a winning bidder or by an applicant whose Form 175 application is not mutually exclusive with other applicants, until the expiration of a period of forty (40) days following the issuance of a public notice listing the application, or any major amendments thereto, as acceptable for filing. See also § 1.2108 of the Commission's Rules.

(c) As an exception to paragraphs (a)(1), (a)(2) and (b) of this section, the public notice provisions are not applicable to applications:

(1) For authorization of a minor technical change in the facilities of an authorized station where such a change would not be classified as a major amendment (as defined by § 24.823) were such a change to be submitted as an amendment to a pending application;

(2) For issuance of a license subsequent to a radio station authorization or, pending application for a grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(3) For extension of time to complete construction of authorized facilities (see § 24.203;

(4) For temporary authorization pursuant to § 24.825(b);

(5) [Reserved]

(6) For an authorization under any of the proviso clauses of Section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(7) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(8) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

§ 24.828 Dismissal and return of applications.

(a) Except as provided under § 24.829, any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to designation for hearing or, in the case of applications filed on Forms 175 and 175-S, prior to auction. An applicant's request for the return of his application after it has been accepted for filing will be considered to be a request for dismissal without prejudice. Applicants requesting dismissal of their applications may be subject to penalties contained in § 1.2104 of the Commission's Rules. Requests for dismissal shall comply with the provisions of § 24.829 as appropriate.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing only if:

(1) A written petition is submitted to the Commission and is properly served upon all parties of record, and

(2) The petition complies with the provisions of § 24.829 (whenever applicable) and demonstrates good cause.

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal shall be without prejudice if made prior to designation for hearing or prior to auction, but dismissal may be made with prejudice for unsatisfactory

compliance with § 24.829 or after designation for hearing or after the applicant is notified that it is the winning bidder under the auction process.

§ 24.829 Ownership changes and agreements to amend or to dismiss applications or pleadings.

(a) Applicability. Subject to the provisions of § 1.2105 of the Commission's Rules (Bidding Application and Certification Procedures; Prohibition of Collusion), this section applies to applicants and all other parties interested in pending applications who wish to resolve contested matters among themselves with a formal or an informal agreement or understanding. This section applies only when the agreement or understanding will result in:

(1) A major change in the ownership of an applicant to which §§ 24.823(c) and 24.823(g) apply or which would cause the applicant to lose its status as a designated entity under § 24.709, or

(2) The individual or mutual withdrawal, amendment or dismissal of any pending application, amendment, petition or other pleading.

(b) Policy. Parties to contested proceedings are encouraged to settle their disputes among themselves. Parties that, under a settlement agreement, apply to the Commission for ownership changes or for the amendment or dismissal of either pleadings or applications shall at the time of filing notify the Commission that such filing is the result of an agreement or understanding.

(c) The provisions of § 22.927 of the Commission's Rules will apply in the event of the filing of petitions to deny or other pleadings or informal objections filed against broadband PCS applications. The provisions of § 22.928 of the Commission's Rules will apply in the event of dismissal of broadband PCS applications. The provisions of § 22.929 of the Commission's Rules will apply in the event of threats to file petitions to deny or other pleadings or informal objections against broadband PCS applications.

§ 24.830 Opposition to applications.

(a) Petitions to deny (including petitions for other forms of relief) and responsive pleadings for Commission consideration must comply with § 1.2108 and must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers and radio service involved) with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of §§ 1.41 through 1.52 except where otherwise provided in § 1.2108;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a

party in interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto (unless the Commission otherwise extends the filing deadline); and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date of filing thereof with the Commission.

(b) A petition to deny a major amendment to a previously-filed application may only raise matters directly related to the amendment which could not have been raised in connection with the underlying previously-filed application. This subsection does not apply, however, to petitioners who gain standing because of the major amendment.

§ 24.831 Mutually exclusive applications.

(a) The Commission will consider applications for broadband PCS licenses to be mutually exclusive if they relate to the same geographical boundaries (MTA or BTA) and are timely filed for the same frequency block.

(b) Mutually exclusive applications filed on Form 175 for the initial provision of broadband PCS are subject to competitive bidding in accordance with the procedures in Subpart H and in Part 1, Subpart Q.

(c) An application will be entitled to comparative consideration with one or more conflicting applications only if the Commission determines that such comparative consideration will serve the public interest.

(d)-(j) [Reserved]

§ 24.832 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience and necessity. See also § 1.2108 of the Commission's Rules.

(b) The grant shall be without a formal hearing if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing and is in accordance with the Commission's rules, regulations and other requirements;

(2) The application is not subject to a post-auction hearing or to comparative consideration pursuant to § 24.831 with another application(s);

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and
(5) The applicant is qualified under current FCC regulations and policies.

(c) If the Commission should grant without a formal hearing an application for an instrument of authorization which is subject to a petition to deny filed in accordance with § 24.830, the Commission will deny the petition by the issuance of a Memorandum Opinion and Order which will concisely state the reasons for the denial and dispose of all substantial issues raised by the petition.

(d) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it shall inform the applicant of the reasons therefor, and the grant shall be considered final unless the Commission revises its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if upon consideration of the application, any pleadings or objections filed or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented (see also § 1.2108);

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete and in accordance with the Commission's rules, regulations and other requirements; or

(3) The application is entitled to comparative consideration (under § 24.831) with another application (or applications).

(f) The Commission may grant, deny or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) or Part 1 of this Chapter.

(g) [Reserved]

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with Subpart A of Part 1 of this Chapter.

§ 24.833 - 24.838 [Reserved]

§ 24.839 Transfer of Control or Assignment of License.

(a) Approval required. Authorizations shall be transferred or assigned to another party, voluntarily (for example, by contract) or involuntarily (for example, by death, bankruptcy or

legal disability), directly or indirectly or by transfer of control of any corporation holding such authorization, only upon application and approval by the Commission. A transfer of control or assignment of station authorization in the broadband Personal Communications Service is also subject to §§ 24.711(e), 24.712(d), 24.713(b) (unjust enrichment) and 1.2111(a) (reporting requirement).

(1) A change from less than 50% ownership to 50% or more ownership shall always be considered a transfer of control.

(2) In other situations a controlling interest shall be determined on a case-by-case basis considering the distribution of ownership and the relationships of the owners, including family relationships.

(b) Forms required.

(1) Assignment.

(i) FCC Form 490 shall be filed to assign a license or permit.

(ii) In the case of involuntary assignment, FCC Form 490 shall be filed within thirty (30) days following the event giving rise to the assignment.

(2) Transfer of control.

(i) FCC Form 490 shall be submitted in order to transfer control of a corporation holding a license or permit.

(ii) In the case of involuntary transfer of control, FCC Form 490 shall be filed within thirty (30) days following the event giving rise to the transfer.

(3) Form 430. Whenever an application must be filed under paragraph (a)(1) or (2) of this section, the assignee or transferee shall file FCC Form 430 ("Common Carrier Radio License Qualification Report") unless an accurate report is on file with the Commission.

(4) Notification of completion. The Commission shall be notified by letter of the date of completion of the assignment or transfer of control.

(5) If the transfer of control of a license is approved, the new licensee is held to the original construction requirement of § 24.203.

(c) In acting upon applications for transfer of control or assignment, the Commission will not consider whether the public interest, convenience and necessity might be served by the transfer or assignment of the authorization to a person other than the proposed transferee or assignee.

(d) Restrictions on Assignments and Transfers of Licenses for Frequency Blocks C and F. No assignment or transfer of control of a license for frequency Block C or frequency Block F will be granted unless --

(1) the application for assignment or transfer of control is filed after five years from the date of the initial license grant;

(2) the application for assignment or transfer of control is filed after three years from the date of the initial license grant and the proposed assignee or transferee meets the eligibility criteria set forth in § 24.709;

(3) the application is for partial assignment of a partitioned service area to a rural telephone company pursuant to § 24.714 and the assignee meets the eligibility criteria set forth in § 24.709; or

(4) the application is for an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy, an independent receiver appointed by a court of competent jurisdiction in a foreclosure action, or, in the event of death or disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; provided that, the applicant requests a waiver pursuant to this paragraph.

(e) If the assignment or transfer of control of a license is approved, the assignee or transferee is subject to the original construction requirement of § 24.203.

§§ 24.840 - 24.842 [Reserved]

§ 24.843 Extension of time to complete construction.

(a) If construction is not completed within the time period set forth in § 24.203, the authorization will automatically expire. Before the period for construction expires an application for an extension of time to complete construction (FCC Form 489) may be filed. See subsection (b) of this section. Within 30 days after the authorization expires an application for reinstatement may be filed on FCC Form 489.

(b) Extension of Time to Complete Construction. An application for extension of time to complete construction may be made on FCC Form 489. Extension of time requests must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to complete construction is due to causes beyond its control.

(c) An application for modification of an authorization (under construction) does not extend the initial construction period. If additional time to construct is required, an FCC Form 489 must be submitted.

(d) [Reserved]

§ 24.844 Termination of authorization.

(a) Termination of authorization.

(1) All authorizations shall terminate on the date specified on the authorization or on the date specified by these rules, unless a timely application for renewal has been filed.

(2) If no application for renewal has been made before the authorization's expiration date, a late application for renewal will be considered only if it is filed within thirty (30) days of the expiration date and shows that the failure to file a timely application was due to causes beyond the applicant's control. During this 30-day period, a reinstatement application must be filed on FCC Form 489. Service to subscribers need not be suspended while a late-filed renewal application is pending, but such service shall be without prejudice to Commission

action on the renewal application and any related sanctions. See also § 24.16 (Criteria for Comparative Renewal Proceedings).

(b) Termination of special temporary authorization. A special temporary authorization shall automatically terminate upon failure to comply with the conditions in the authorization.

(c) [Reserved]

STATEMENT OF
COMMISSIONER JAMES H. QUELLO

RE: BROADBAND PCS AUCTION PROCEDURES
PP DOCKET NO. 93-253

Today the Commission puts in place the procedures that will govern perhaps our most eagerly-awaited new spectrum auctions: the auctions for broadband PCS frequencies.

This Report and Order embodies our best collective effort to meet our Congressionally-imposed objectives in a responsible and fair way consistent with the record before us. In this process we have been particularly sensitive to the need to provide increased opportunity to small businesses, minorities, women, and rural telephone companies commensurate with the varying degrees of difficulty each faces in attracting capital. In the building of broadband PCS systems there is not only room for, but ***need*** for, players large and small, with different outlooks, different strategies, and different strengths. Our action today attempts to make that room and to meet that need.

Is every piece and part of this Report and Order perfect? No - but then, nothing is. Might each of us have drawn somewhat different lines had each been the sole author? Of course. But, not unlike the benefits we envision flowing from the policy of entrepreneurial inclusion in licensing PCS, I believe this Report and Order is sounder for having drawn from my colleagues' distinctive strengths and outlooks. And if the decisions we make today require further refinement, I am completely open to the presentation of facts and arguments in favor of any such changes. In the meantime, I support this Report and Order as the penultimate administrative precursor to moving broadband PCS from the drawing board to the launch pad.

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: IMPLEMENTATION OF SECTION 309(j) of the Communications Act--Competitive Bidding (PP Docket no. 93-253)

Today, we adopt the auction rules for broadband Personal Communications Services (PCS). The impact of this decision cannot be overstated. It is significant and historic. In this Order, we address several important statutory goals established by Section 309(j) of the 1993 Omnibus Budget Reconciliation Act [OBRA]. My decision-making process in this docket was governed by several policy goals: 1. Develop auction rules that will permit efficient aggregation schemes for spectrum or geographic PCS service blocks; 2. Ensure that our auction rules provide sufficient flexibility to enhance the probability of participation by minorities, women, rural telephone companies, and small businesses [Designated Entities] in the provision of PCS services; 3. Develop an auction framework that will allow various business plans to be executed, thus promoting viable opportunities to serve a variety of market demand, from wide-area mobile telephony to niche data, voice or video applications; 4. Ensure that the capital markets can clearly evaluate the incentives created for investment in businesses owned by minority, women and small business PCS applicants; and 5. Develop an auction framework that addresses universal service goals through a competitive, private investment framework.

The decision today balances the various goals of Section 309(j) and my policy goals for this auction docket.[1] It reflects an effort to address the strong views of various competing interests for broadband PCS services. The decision is narrowly tailored to address the challenges of disseminating PCS licenses among a wide variety of businesses in order to achieve a robust, competitive wireless marketplace. The Order reflects a philosophy that the PCS market should not be governed by a few

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[1] PCS services throughout the U.S. could provide a competitive solution to several goals emphasized by current National Information Infrastructure initiatives [NII]. Specifically, a wide dissemination of PCS licenses among businesses, large and small, minority, women-owned and rural, could support the NII goals of: 1. universal service; 2. private investment in infrastructure; 3. new competition; and 4. open access. The auction rules today create the possibility that PCS could become a significant market solution to universal access and affordable pricing throughout the U.S. and its territories.

large entities; rather, the market should provide sufficient opportunities to "democratize" the ownership of our PCS infrastructure among a wide variety of businesses, large and small, new entrants and existing players, minorities or women and rural companies.

There has been significant interest in this proceeding expressed to us by existing industry players, the Administration, Congress, minorities, women, rural telephone companies, small businesses, and the financial community. The decision today reflects a thorough effort to balance the various positions reflected in the record by each of these interests. Based on the requirements of Section 309(j) and my policy goals, I am generally satisfied that we have achieved a narrowly tailored resolution to the competing interests for PCS licenses. To understand the tailoring accomplished within this framework, interested parties must review the entire "package" of policy tools utilized to support the goal of disseminating licenses among a wide variety of competing businesses.[2]

While shaping the policy framework to implement PCS auction rules the following factors were important for me in assessing the effectiveness of the this Order today: a. The historical capital formation barriers for minority and women-owned businesses; b. The under- representation of minority and women-owned firms in the telecommunications industry; c. The relative economic leverage of existing telecommunications providers in terms of cost of capital, investment in infrastructure, existing revenue, cashflow, earnings and market value, economies of scale, market penetration, vendor relationships, customer and billing relationships, and access to subsidized funding or market price formulas; d. Potential costs of PCS licenses in the auction; e. Potential buildout costs of PCS licenses; and f. Potential costs of competing against existing communications service providers who have a significant headstart. The decision today addresses these factors in a balanced manner.

Simultaneous, multiple round bidding will permit entities to aggregate licenses across markets or within markets. In addition, the entrepreneurial blocks, block C [30 Mhz BTA] and block F [10 Mhz BTA], support Section 309(j) license dissemination requirements by limiting the relative economic power of the competitors for PCS licenses within these auctions. Without eligibility restrictions on blocks C and F, the largest

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[2] Upon release of this Order, I believe the Commission must actively provide briefings to the public regarding the basic requirements of these auction rules. I look forward to hearing from the public regarding the effectiveness of future auction seminars that highlight the requirements imposed by these PCS rules.

telecommunications providers collectively representing $195.5 billion in revenues, $61.9 billion in earnings, and $86.7 billion in cumulative book value, could dominate all PCS license auctions. In addition, interexchange carriers pay approximately $25 billion in cumulative local access charges on an annual basis. Cellular carriers represent another $10-12 billion in cumulative revenues, and a similar figure for capital investment. Thus, the combined impact of such market leverage and the incentive to reduce billions of dollars in fixed costs would likely eliminate smaller companies and new entrants from successful bids for PCS licenses. I believe further market intervention is needed to address these factors. Utilizing bidding credits only, without other policy tools in a package, is not likely to support Section 309(j) goals for disseminating PCS licenses among small, minority and women-owned businesses, unless the bidding credits were in the extreme range of 60-70%. Thus, the entrepreneurial blocks are likely to create a wider dissemination of licenses among a greater variety of businesses and potential new entrants.

Our eligibility and attribution rules for entrepreneur block licenses also are likely to further the ownership dissemination of PCS licenses. Incentives for partnering between larger telecommunications providers and small companies, or between large companies and minorities or women, are enhanced by a variety of bidding credits, installment payments, or tax certificate incentives. Due to the capital-intensive nature of PCS, our definition of entrepreneur [$125 million] and small business [$40 million] are sufficiently flexible to encompass a vast majority of businesses, including Tier II and Tier III local exchange carriers, various cellular operators, paging companies, cable companies, Specialized Mobile Radio operators, rural telephone companies, broadcast companies, and various other service providers within the communications industry. In addition, new entrants, with ongoing businesses in other industries or those creating start-ups, are likely to have a better opportunity to attract capital, joint venture, or form consortia to participate in PCS. License ownership caps, spousal attribution rules, and corporate or individual net worth limits also are designed to enhance our goal of disseminating PCS licenses among various businesses. Our decision to permit partitioning of PCS licenses to promote service by rural telephone companies also supports the statutory goals of Section 309(j). In addition, we will issue a Further Notice concurrent with the release of this Order that proposes to extend partitioning of PCS licenses to minority and women-owned businesses as well; this additional licensing flexibility is likely to promote service to the public and enhance our efforts to achieve the statutory goals of Section 309(j).

I believe the combined effect of our prior June 9 PCS decision this auction decision is a pro-competitive PCS license structure. The Commission's prior decision in cellular, where the FCC set-aside one license per market for local exchange carriers, and provided one license per market for new entrants, did not result in the most efficient market structure for fully competitive wireless services. The cumulative effect of our PCS license and auction decisions is more likely to create incentives for a competitive, robust PCS marketplace. Under our auction framework, a variety of competing business interests will have a more reasonable opportunity to bid for PCS licenses and compete in the wireless marketplace. By tailoring our policy tools to support a broader dissemination of PCS licenses, the Commission creates a win-win-win scenario -- the consumer has more choice, our economy creates new business opportunities, and we proceed to support the goals of promoting universal service and access through competitive market solutions. I look forward to receiving the feedback of the financial community, industry and designated entities as we proceed to implement the package of policy tools to effectuate the rapid deployment of PCS services by a wide variety of players.

STATEMENT OF COMMISSIONER SUSAN NESS

RE: In the Matter of Implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket No. 93-253

With today's action, the Commission has charted a clear course towards the broadband PCS auctions. Our deliberations have produced a decision that is narrowly tailored to meet Congress' objectives for competitive bidding.

We have adopted auction rules that will provide meaningful opportunity in this exciting new sector of the telecommunications industry to those who have historically been absent from the table. We have also taken steps to ensure that licenses will be disseminated to a wide variety of applicants. No one is guaranteed a favorable outcome; however, we have made the process as fair as possible. Our auction methodology will promote a robust competition to put each license in the hands of the applicant who values it most. Let us also not lose sight of another result Congress intended: for the first time, the public will recognize substantial revenues from licensing a particularly valuable portion of the spectrum resource.

The record we have factored into our decision-making is substantial. This record includes the views of the many interested parties who have taken the time to meet with me. I am confident that we have achieved a balanced result. We have also incorporated safeguards into our rules to minimize shams.

On a related note, I am concerned lest the auction process attract not only serious players, but also those unscrupulously wishing to take advantage of consumers in the form of "get rich quick" schemes. I caution potential applicants to keep in mind that the cost of acquiring a PCS license is likely to be substantial, and the business risks are high. Broadband PCS is not a place to earn phenomenal returns on your retirement fund. I encourage the Commission staff to get the word out to consumers themselves, as well as the various consumer protection agencies. A concerted effort in this area before the auction begins could save consumers a lot of grief.

I fully support the Commission's efforts to make broadband PCS a reality. The rules and procedures we adopt today will hasten that result.

SEPARATE STATEMENT

OF

COMMISSIONER RACHELLE B. CHONG

Re: Implementation of Section 309(j) of the Communications Act -- Competitive Bidding PP Docket No. 93-253

Just three weeks ago, the Commission finalized rules governing broadband personal communications services, or PCS. Today, consistent with congressional intent, we adopt rules establishing a system of competitive bidding to award PCS licenses. Taken together, these two decisions represent an important milestone in our efforts to bring the benefits of this innovative wireless technology to the American public.

Today's decision is the result of an enormous amount of work by the Commission's staff and all who provided comments in this proceeding. It reflects a balance of the various perspectives presented in this extensive rulemaking record and the goals of Section 309(j) of the Communications Act. There are, of course, differing views of how the competitive bidding rules should be drafted. It is critical, however, to establish the ground rules for PCS in order to facilitate the licensing and rapid deployment of this vital new service. Thus, while every aspect of today's decision may not fully comport with my regulatory philosophy, I support these rules in order to move PCS forward.

The establishment of the two "entrepreneurs'" blocks will increase diversity in the telecommunications industry. It will encourage small businesses, rural telephone companies, and companies owned by women and minorities to participate in the PCS industry, consistent with the goals of Congress. While I support the overall approach reflected in today's decision, two general concerns are worth noting. A fundamental premise of competitive bidding is that the bidder who values a particular license most will submit the highest bid. Presumably, a bidder will devise a bidding strategy based on business judgments and a careful assessment of the economics of providing service in specific markets. I am concerned that some aspects of today's decision may unduly interfere with those judgments. I would rather have market forces shape the bidding process to the greatest extent possible. Moreover, the competitive bidding plan we have crafted is more complicated than I would have preferred, although I fully recognize that we are dealing with novel and complex issues. Despite these reservations, in the final analysis, I believe it is essential that we move forward with a set of rules. This will unleash innovators to build these important new communications systems and provide vigorous competition to existing wireless telephone services.

We are charting new waters here. Today's decision reflects our best predictive judgments based on the administrative record. When it comes to issuing licenses by competitive bidding, practical experience is in short supply and the consequences of our decision are great. I am hopeful that our decision today will result in successful auctioning of these licenses.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Commission Requirements
for Cost Support Material
To Be Filed with
Virtual Collocation Tariffs
for Special Access and
Switched Transport

TARIFF REVIEW PLAN ORDER

Adopted: July 25, 1994; Released: July 25, 1994

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On July 14, 1994, the Commission adopted its Virtual Collocation Order[1] in response to the June 10, 1994 decision of the U.S. Court of Appeals for the District of Columbia Circuit in Bell Atlantic v. FCC.[2] In the Virtual Collocation Order, the Commission reaffirmed its commitment to its expanded interconnection policy and directed LECs already subject to expanded interconnection requirements to provide expanded interconnection for both special access and switched transport through virtual collocation. The Commission required these LECs to file tariffs offering virtual collocation on September 1, 1994, to be effective on December 15, 1994.[3] The Commission exempted LECs from the mandatory virtual collocation requirement in central offices at which they choose to provide physical collocation under tariff, subject to non-streamlined regulation as a communications common carrier service.[4] The instant Order sets forth a uniform Tariff Review Plan and certain other requirements to govern summary cost support material that LECs must file to support their tariff filings under the Commission's mandatory virtual collocation regime.

II. BACKGROUND

2. In the Virtual Collocation Order, the Commission decided not to impose a detailed rate structure for connection charges under its mandatory virtual collocation regime. The Commission concluded that, for the reasons set forth in earlier orders in the expanded interconnection proceeding, such a structure could be too rigid. The Commission, however, set forth additional requirements that could facilitate the tariff review process.[5] Drawing upon staff experience in the ongoing investigation of the LECs' special access and switched transport expanded interconnection tariffs,[6]

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[1] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, FCC No. 94-190, adopted July 14, 1994 (Virtual Collocation Order).

[2] Bell Atlantic Telephone Companies v. FCC, No. 92-1619, 1994 WL 247134 (D.C. Cir., June 10, 1994) (Bell Atlantic v. FCC). In Bell Atlantic v. FCC, the D.C. Circuit stated that it would vacate in part the first two of the Commission's expanded interconnection orders on the ground that the Commission lacked authority under the Communications Act of 1934, as amended, to require local exchange carriers (LECs) to provide expanded interconnection for special access through physical collocation. The D.C. Circuit also stated that it would remand the Commission's orders to permit the Commission to consider whether and to what extent to impose virtual collocation requirements in the absence of a physical collocation requirement. Bell Atlantic v. FCC, slip op. at 9-10 (citing Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992), vacated in part and remanded sub nom. Bell Atlantic v. FCC, No. 92-1619 (D.C. Cir., June 10, 1994); recon., 8 FCC Rcd 127 (1992); recon., 8 FCC Rcd 7341 (1993)).

[3] See Virtual Collocation Order at ¶ 3.

[4] Id. at ¶¶ 31-34; 36. The Commission concluded that the tariffing requirements for physical collocation set forth in earlier orders in the expanded interconnection proceeding should apply to physical collocation provided pursuant to the exemption. Id. at ¶ 73.

[5] Id. at ¶¶ 115-117.

the Commission found that the LECs' use of disparate rate structures can complicate the ability of interested parties and Commission staff to evaluate the reasonableness of LECs' rate structures and levels.[7] Accordingly, the Commission instructed LECs, inter alia, that their tariff support information must identify the specific costs to be recovered by each rate element. Further, the Commission specified that each rate element should logically relate to the service function provided under that rate element.[8]

3. The Commission stated that, in order to compare more effectively the LECs' rate structures and levels for virtual collocation, it would require LECs to provide cost support data for their September 1, 1994 virtual collocation tariff filings pursuant to a uniform Tariff Review Plan format established by the Bureau.[9] The Commission also stated that, absent justification, LECs may not recover a greater share of overheads in rates for expanded interconnection services than they recover in rates for comparable services. The Commission explained that LECs have the burden of demonstrating that their connection charges meet this standard and are otherwise just, reasonable, and not unreasonably discriminatory.[10] Accordingly, this Order sets forth a uniform Tariff Review Plan, or TRP, format and, in addition, requires that LECs provide information regarding their overhead loadings for connection charges and for comparable services.

III. TARIFF REVIEW PLAN

4. Our uniform TRP format for the LECs' virtual collocation filings, set forth in Appendix A to this Order, disaggregates expanded interconnection service, by basic service function, into the following seven categories: (1) Provisioning Function;[11] (2) Entrance Function;[12] (3) Termination Function;[13] (4) Cross-Connection Function;[14] (5) Equipment Installation Function;[15] (6) Maintenance and Repair Function;[16] and (7) Technician Training

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[6] These tariffs were filed under the Commission's existing physical collocation rules. See Ameritech Operating Companies, CC Docket No. 93-162, 8 FCC Rcd 4589 (Com.Car.Bur. 1993) (instituting investigation into special access expanded interconnection tariffs); Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Order Designating Issues for Investigation, 8 FCC Rcd 6909 (Com.Car.Bur. 1993)(Designation Order); Phase I, First Report and Order, 8 FCC Rcd 8344 (1993) (prescribing interim maximum overhead loading factors); Supplemental Designation Order and Order to Show Cause, DA 94-556 (Com.Car.Bur., released May 31, 1994); Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Switched Transport, Memorandum Opinion and Order, 9 FCC Rcd 817 (Com.Car.Bur. 1994) (instituting investigation into switched transport expanded interconnection tariffs).

[7] Virtual Collocation Order at ¶ 114.

[8] Id. at ¶ 116.

[9] Id. at ¶ 117.

[10] Id. at ¶ 128.

[11] The Provisioning Function includes all costs associated with service order processing and design engineering for equipment dedicated to the interconnector.

[12] The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.

[13] The Termination Function includes all costs of equipment, e.g., the optical line terminating multiplexer (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.

[14] The Cross-Connection Function includes costs for all cabling and cable support structures between the LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.

[15] The Equipment Installation Function includes the costs of installing and initially testing the central office equipment dedicated to the interconnector.

[16] The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the

Function.[17] The TRP includes separate charts for each of these functions.

5. Because the Commission has not mandated a detailed rate structure, LECs may tariff a set of rate elements that does not exactly match the above functions. LECs nonetheless are required to categorize rate elements into these functions for purposes of the TRP filing. If a particular function includes several rate elements, LECs should display each rate element individually in the TRP chart for the relevant function.[18]

6. Conversely, if a particular rate element includes costs for more than one function, LECs should partition these costs among the relevant functions. Further, they should also derive illustrative rates based on those partitioned costs and then display the partitioned costs and illustrative rates on the relevant TRP pages. The unit costs and illustrative rates[19] for partitioned rate elements must be calculated using the same unit of measurement (e.g., feet, fuse amps, circuit orders, collocation requests) as the filed, unpartitioned rate element. Moreover, the sum of the partitioned unit costs must equal the unit cost of the filed, unpartitioned rate element, and the sum of the illustrative partitioned rates must equal the rate for the filed, unpartitioned rate element. Finally, a chart should be appended to the TRP listing each rate element that is partitioned and showing that the sum of the unit costs and rates of the partitioned parts equals the unit cost and rate, respectively, of the unpartitioned rate.

7. For each function, the TRP requires a complete list of plant and equipment, including the name of the plant or equipment item, the associated Part 32 account numbers, gross investment amounts, and estimated depreciable lives. The TRP also requires detailed expense and tax information, including the name of the expense or tax, the Part 32 account number, and the expense or tax amount.

8. To the extent that any LECs choosing to provide physical collocation in particular central offices wish to file revisions to their currently effective physical collocation tariffs, those LECs should use the TRP format appended to the Bureau's July 23, 1993 Designation Order.[20] All TRP charts should be provided in both hardcopy and in LOTUS 1-2-3 computer format. Diskettes with the LOTUS worksheet file will be made available to the LECs and interested parties for this purpose.

IV. DOCUMENTATION

9. Itemized costs. To facilitate our analysis of itemized cost data, LECs must document all itemized investments, expenses, and taxes listed in each TRP chart. Documentation should include a complete explanation of how the costs for each item were derived, including relevant worksheets and source listings. If costs are derived from cost factors (e.g., "annual charge factors" or "carrying charge factors"), such factors should be fully explained and justified as consistent with cost-causation principles. LECs must explain whether investment amounts are calculated on a prospective basis, embedded basis, or some other basis. LECs must also justify the depreciable lives for each item of equipment listed on the TRP. In addition, LECs must justify the percentage cost of money used in their rate calculations, as displayed on each TRP chart.

10. For each nonrecurring charge that recovers labor costs, LECs must describe each labor function, provide the estimated number of hours required for each function, describe the method of estimation, and provide the estimated labor costs. LECs must describe whether the estimated labor costs

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interconnector.

[17] The Technician Training Function includes the LEC's costs of training its technicians to install, repair or maintain the interconnector-designated electronic equipment with which the technicians are unfamiliar.

[18] For instance, a LEC may have several rate elements associated with the Equipment Installation Function, such as (1) entrance cable placement, first foot; (2) entrance cable placement, additional foot; (3) splicing per initial fiber; and (4) splicing per subsequent fiber. Unit cost and rate data should be displayed for each of these rate elements on the TRP chart for the Equipment Installation Function. Each chart has multiple columns to accommodate many rate elements, but LECs may add charts containing additional columns if necessary.

[19] Rates may exceed unit costs due to the inclusion of overheads.

[20] See Designation Order, Appendix C, 8 FCC Rcd at 6930-65.

reflect only wages, wages plus benefits, wages plus benefits and loadings, or whether these costs are estimated on some other basis. If loadings are included in labor costs, LECs must describe what portion of the reported wage rate is attributable to loadings.

11. Overhead cost factors. To enable us to evaluate the reasonableness of overhead amounts included in expanded interconnection service (EIS) rates, LECs must submit the following information regarding the overhead loadings for EIS and comparable services: LECs must provide the overhead factors[21] used for each EIS rate element, identify the cost basis for these factors, explain how the factors were derived from that basis, and justify the reasonableness of the factors.[22] LECs should also provide numbers used to compute the factors and provide sources from which these numbers were derived. To the extent overheads vary among EIS rate elements, LECs should explain the basis for the variation. The overhead factors should be provided, as specified in the EIS Overhead Analysis table in Appendix B to this Order, in both hardcopy and in LOTUS 1-2-3 computer format. Within two days of the release of this Order, diskettes with the LOTUS worksheet file will be made available to the LECs and interested parties for this purpose.

12. LECs also must provide, on a service-by-service basis, overhead factors for all point-to-point DS1 and DS3 special access services offered. In addition, overhead factors must be provided on a service-by-service basis for all DS1 and DS3 switched transport services if the rates for these switched services differ from the special access rates. For purposes of this request, these special access and switched services for which overhead factors must be listed are not limited to the generic electrical and optical services. They also include the discounted volume and term services; channel termination services;[23] interoffice services comprised of channel terminations and channel mileage;[24] and any specialized service offerings, e.g., self-healing network services. The overhead factors for these services should be provided both in hardcopy and in LOTUS 1-2-3 computer format. A company, however, may cross-reference overhead factors submitted in the ongoing tariff investigation,[25] if the submitted factors are current and complete.

13. If a company operates in more than one state, its overhead factors for DS1 and DS3 services should be based on rate and cost data applicable only to states in which expanded interconnection service is offered. The overhead factor for a particular DS1 or DS3 service should be reported on a state-by-state basis if the rates for that service vary by state. Otherwise, the overhead factor should be based on a composite of rate and cost data averaged over all states in which expanded interconnection is offered; and the company should explain how such data are averaged over states.

14. LECs should explain the basis for any difference in overheads: (1) among the various DS1 and DS3 services; and (2) between DS1 and DS3 services

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[21] For purposes of this request, an overhead factor is the ratio of a service's tariffed rate to its direct cost.

[22] In addition, LECs should justify any "rounding" of costs included in the filed rates.

[23] When developing overhead factors for channel termination services, the service price should be based on the average length of such channels if the rate contains a mileage-sensitive element. Moreover, this length also should be reported for each service.

[24] When developing overhead factors for services comprised of channel terminations and channel mileage, LECs should assume each service is provided point-to-point with the following configuration: one channel termination, channel mileage and two channel mileage terminations, i.e., terminations for both ends of the interoffice channel. Channel mileage should reflect the average length of interoffice channel and this length should be reported for each service. The average length should equal the number of miles reported in the annual filing divided by the number of interoffice circuits. The number of interoffice circuits may be replaced by an appropriate surrogate. If a LEC elects to do this, it should identify the surrogate and explain how it is a reasonable approximation of the number of interoffice circuits.

[25] In the Designation Order, we required LECs to submit rate and cost information regarding overheads for EIS and comparable services. See Designation Order, 8 FCC Rcd at 6913, ¶ 22(c)(1). The Tariff Division also issued requests for this information in letters dated March 11, 1994, April 15, 1994, and May 10, 1994.

on the one hand and expanded interconnection services on the other. Further, if a particular EIS rate element is primarily intended to recover a cost normally recovered through the overhead loadings on these DS1 and DS3 services, e.g., power expense, LECs should explain to what extent the overhead loadings on the other EIS rate elements were adjusted to prevent double-recovery of overheads.

15. In addition, LECs must provide a copy of the cost study used in developing direct costs for these DS1 and DS3 services. At a minimum, this study should identify unit investment, depreciation, cost of money, income taxes, maintenance expense, administrative expense, marketing expense, and other taxes. Further, LECs must explain the costing methodology used to identify these direct costs. They should explain any differences that may exist between this costing methodology and that used to develop direct costs for EIS rate elements. This information should be provided in hardcopy. A company, however, may cross-reference data submitted in the ongoing tariff investigation, if the submitted data are current and complete.

16. Sample price-outs. Although expanded interconnection service is provided in the form of individual rate elements, the cost of the overall service is a significant factor that interconnectors consider when deciding whether and to what extent to order interconnection service. To gauge the overall service cost of a sample interconnection configuration, we require that each LEC provide "price-outs" for the provision of 100 DS1s, as specified in the Price-Out Chart in Appendix C to this Order. To calculate the price-out, LECs should assume that nonrecurring costs will be amortized over a 5-year period at an 11.25 percent discount rate. LECs also should make reasonable assumptions regarding LEC-specific variables (e.g., cable lengths) that must be specified to calculate the price-out. LECs may provide additional sample price-outs using other assumptions, if they wish. In that case, LECs should identify the alternative assumptions and explain why they are needed.

17. To the extent that any LECs choosing to provide physical collocation in particular central offices wish to file revisions to their currently effective physical collocation tariffs, those LECs should use the sample price-out format appended to the Bureau's July 23, 1993 Designation Order.[26] All price-out Charts should be provided in both hardcopy and in LOTUS 1-2-3 computer format. Diskettes with the LOTUS worksheet file will be made available to the LECs and interested parties for this purpose.

V. COMPLIANCE WITH PAPERWORK REDUCTION ACT

18. Our adoption of uniform and standardized cost support guidelines in this Order is intended to minimize the paperwork burden placed on the LECs. We are submitting this TRP information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3507. In addition, we are requesting expedited review of this collection under the provisions of 5 C.F.R. § 1320.18.

VI. PROCEDURAL REQUIREMENTS

19. This Order will be sent directly to all LECs that must file virtual collocation tariffs on or before September 1, 1994. Companies must file two copies of their cost support, including the TRP, in both hardcopy and computer diskette format, with the Tariff Division. In addition, companies must file one copy of their cost support, including the TRP, with the Commission's official commercial contractor, International Transcription Services, Inc. (ITS). Companies and interested parties may obtain diskettes with the LOTUS worksheet files by contacting Carol Canteen at (202) 418-1523. A copy of the Order and all appendices will be available for inspection at the Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. The Commission will publish the text of this Order in the FCC Record. Those parties wishing to obtain copies of the appendices can do so through the Commission's contractor for public records duplication.

20. Each company should submit its TRP separately from other portions of its tariff filing. Each TRP should be filed in a separate Volume 1-2 accompanying Volume 1 of the Description and Justification. Each TRP should be arranged by study area rather than by chart.

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[26] See Designation Order, Appendix C, 8 FCC Rcd at 6966-67.

FEDERAL COMMUNICATIONS COMMISSION

A. Richard Metzger, Jr.
Acting Chief
Common Carrier Bureau

APPENDIX A

TARIFF REVIEW PLAN
FOR
EXPANDED INTERCONNECTION SERVICE

INSTRUCTIONS FOR TARIFF REVIEW PLAN

ROW INSTRUCTIONS:

(1) LECs may add more rows, if needed.
(2) Row 1: Total of Rows 2 through 20.
(3) Row 23: Find Cost of Money (Percentage) = i by substituting i into the following equation:
Row #22 = @pmt (Row #1, i, Row #1 / Row #21) – Row #21
(4) Row 26: Total of Rows 27 through 32.
(5) Row 34: Total of Rows 35 through 50.
(6) Row 51: Sum of Rows 21, 22, 24, 25, 26, 33, 34 for Recurring TRP chart.
(7) Row 52: Row 51 / 12 for Recurring TRP chart. For Nonrecurring TRP, sum rows as in (6) above.
(8) Row 55: (Row 53 * 12) / Sum (Rows 21, 22, 24, 25, 33)
(9) Row 56: Row 53 / Row 52

DS1 Provisioning Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:
(1) Provisioning Function includes all costs associated with service order processing and design engineering for equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, per additional DS1 arrangement, etc.

DS3 Provisioning Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:
(1) Provisioning Function includes all costs associated with service order processing and design engineering for equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, per additional DS1 arrangement, etc.

DS1 Entrance Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:
(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS1 Entrance Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:
(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS3 Entrance Function

Recuring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:
(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS3 Entrance Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) The Entrance Function includes the costs of conduit, vault, riser, and similar space required to connect the point of interconnection of the interconnector's and the LEC's networks to the point of termination, i.e., to the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., cable placement per first and additional foot, cable splicing, etc.

DS1 Equipment Installation Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) The Equipment Installation Function includes costs of installing and testing the central office equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, etc.

DS3 Equipment Installation Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:
(1) The Equipment Installation Function includes costs of installing and testing the central office equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per DS1 arrangement, etc.

DS1 Cross–Connection Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:
(1) Cross–Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS1 arrangement, etc.

DS 1 Cross–Connection Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) Cross–Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS1 arrangement, etc.

DS3 Cross–Connection Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:

(1) Cross–Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS3 arrangement, etc.

DS 3 Cross–Connection Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) Cross–Connection Function includes costs for all cabling and cable support structures between and LEC's main distribution frame (MDF) and the central office terminating equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per ft., per DS3 arrangement, etc.

DS1 Termination Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:

(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS1 Termination Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt 32 Acct No.	$	$	$	$
36	List: Name – Pt 32 Acct No.	$	$	$	$
37	List: Name – Pt 32 Acct No.	$	$	$	$
38	List: Name – Pt 32 Acct No.	$	$	$	$
39	List: Name – Pt 32 Acct No.	$	$	$	$
40	List: Name – Pt 32 Acct No.	$	$	$	$
41	List: Name – Pt 32 Acct No.	$	$	$	$
42	List: Name – Pt 32 Acct No.	$	$	$	$
43	List: Name – Pt 32 Acct No.	$	$	$	$
44	List: Name – Pt 32 Acct No.	$	$	$	$
45	List: Name – Pt 32 Acct No.	$	$	$	$
46	List: Name – Pt 32 Acct No.	$	$	$	$
47	List: Name – Pt 32 Acct No.	$	$	$	$
48	List: Name – Pt 32 Acct No.	$	$	$	$
49	List: Name – Pt 32 Acct No.	$	$	$	$
50	List: Name – Pt 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS3 Termination Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:
(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS3 Termination Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:
(1) The Termination Function includes all costs of equipment, for example, the optical line terminating mux (OLTM) unit and equipment bay, that are used in terminating the entrance cable dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed, e.g., per POT frame, per 100 square foot arrangement.

DS1 Maintenance and Repair Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:
(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS1 Maintenance and Repair Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS3 Maintenance and Repair Function

Recurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51	ANNUAL COST PER UNIT	$	$	$	$
52	MONTHLY COST PER UNIT	$	$	$	$
53	MONTHLY RATE PER UNIT	$	$	$	
54	UNIT OF MEASUREMENT				
55	RATIO: Rate / Direct Cost				
56	RATIO: Rate / Unit Cost				

Notes:
(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS3 Maintenance and Repair Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:
(1) The Maintenance and Repair Function includes the costs of maintaining and repairing all central office equipment dedicated to the interconnector.
(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS1 Technician Training Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name –.Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) The Technician Training Function includes the LEC's costs of training its technicians to install, repair and maintain the Interconnector –designated electronic equipment with which the technicians are unfamiliar.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

DS3 Technician Training Function

Nonrecurring Rate

		Rate Element Name #1	Rate Element Name #2	Rate Element Name #3	Rate Element Name #4
1	TOTAL INVESTMENT: List Plant & Equip.	$	$	$	$
2	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
3	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
4	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
5	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
6	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
7	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
8	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
9	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
10	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
11	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
12	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
13	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
14	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
15	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
16	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
17	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
18	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
19	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
20	List: Name – Pt. 32 Acct No. – Dep. Life	$	$	$	$
21	DEPRECIATION EXPENSE	$	$	$	$
22	COST OF MONEY ($ Amount)	$	$	$	$
23	COST OF MONEY (Percentage)	%	%	%	%
24	FEDERAL INCOME TAX	$	$	$	$
25	STATE AND LOCAL INCOME TAX	$	$	$	$
26	OTHER TAX: List Taxes	$	$	$	$
27	List: Property Tax	$	$	$	$
28	List:	$	$	$	$
29	List:	$	$	$	$
30	List:	$	$	$	$
31	List:	$	$	$	$
32	List:	$	$	$	$
33	MAINTENANCE EXPENSE	$	$	$	$
34	ADMIN and OTHER EXPENSE: List Expense	$	$	$	$
35	List: Name – Pt. 32 Acct No.	$	$	$	$
36	List: Name – Pt. 32 Acct No.	$	$	$	$
37	List: Name – Pt. 32 Acct No.	$	$	$	$
38	List: Name – Pt. 32 Acct No.	$	$	$	$
39	List: Name – Pt. 32 Acct No.	$	$	$	$
40	List: Name – Pt. 32 Acct No.	$	$	$	$
41	List: Name – Pt. 32 Acct No.	$	$	$	$
42	List: Name – Pt. 32 Acct No.	$	$	$	$
43	List: Name – Pt. 32 Acct No.	$	$	$	$
44	List: Name – Pt. 32 Acct No.	$	$	$	$
45	List: Name – Pt. 32 Acct No.	$	$	$	$
46	List: Name – Pt. 32 Acct No.	$	$	$	$
47	List: Name – Pt. 32 Acct No.	$	$	$	$
48	List: Name – Pt. 32 Acct No.	$	$	$	$
49	List: Name – Pt. 32 Acct No.	$	$	$	$
50	List: Name – Pt. 32 Acct No.	$	$	$	$
51					
52	NONRECURRING COST PER UNIT	$	$	$	$
53	NONRECURRING RATE PER UNIT	$	$	$	$
54	UNIT OF MEASUREMENT				
55	RATIO: Rate Per Unit / Direct Cost				
56	RATIO: Rate Per Unit / Unit Cost				

Notes:

(1) The Technician Training Function includes the LEC's costs of training its technicians to install, repair and maintain the interconnector–designated electronic equipment with which the technicians are unfamiliar.

(2) Row 54: Unit of measurement is the unit on which the rate is being assessed.

Appendix B

(LEC Name) EIS Overhead Analysis

	Virtual EIS Rate Elements		Proposed Rate (a)	Direct Cost (b)	Overhead Factor (c) = (a/b)
1	DS1 X–Connect		$0.00	$0.00	0.00
2	DS3 X–Connect		$0.00	$0.00	0.00
3	Rate Element Name		$0.00	$0.00	0.00
4	Rate Element Name		$0.00	$0.00	0.00
5	Rate Element Name		$0.00	$0.00	0.00
6	Rate Element Name		$0.00	$0.00	0.00
7	Rate Element Name		$0.00	$0.00	0.00
8	Rate Element Name		$0.00	$0.00	0.00
9	Rate Element Name		$0.00	$0.00	0.00
10	Rate Element Name		$0.00	$0.00	0.00
11	Rate Element Name		$0.00	$0.00	0.00
12	DS1 X–Connect	NRC	$0.00	$0.00	0.00
13	DS3 X–Connect	NRC	$0.00	$0.00	0.00
14	Rate Element Name	NRC	$0.00	$0.00	0.00
15	Rate Element Name	NRC	$0.00	$0.00	0.00
16	Rate Element Name	NRC	$0.00	$0.00	0.00
17	Rate Element Name	NRC	$0.00	$0.00	0.00
18	Rate Element Name	NRC	$0.00	$0.00	0.00
19	Rate Element Name	NRC	$0.00	$0.00	0.00
20	Rate Element Name	NRC	$0.00	$0.00	0.00
21	Rate Element Name	NRC	$0.00	$0.00	0.00
22	Rate Element Name	NRC	$0.00	$0.00	0.00

NOTES:

APPENDIX C

SAMPLE PRICE OUT CHART

(Virtual Expanded Interconnection)

ABC COMPANY MODEL OFFICE – Cost of Providing 100 DS1s

1. Non–recurring Charges	Rate	Req/ 100–DS1	Total Non rec.
Service Order Processing/Design Eng	$0.00	1	$0.00
Equipment Installation––Total	$0.00	100	$0.00
Entrance (e.g., cable and cable pull)	$0.00		$0.00
Termination Equipment (e.g., OLTM)	$0.00		$0.00
DS1 Cross–connect			
Training	$0.00		$0.00
Total NRC's			$0.00
Equivalent Monthly Payment Over 5 Years @11.25% Interest			$0.00

2. Recurring Charges	Rate	Req/ 100–DS1	Total Monthly
Entrance Space (e.g. conduit, riser)	$0.00		$0.00
DS1 Cross–connect	$0.00	100	$0.00
Maintenance and Repair––Total	$0.00		$0.00
Entrance (e.g., cable and cable pull)	$0.00		$0.00
Termination Equipment (e.g., OLTM)	$0.00		$0.00
DS1 Cross–connect	$0.00	100	$0.00
Total Recurring			$0.00
Total Monthly Cost			$0.00
Monthly Cost per DS1			$0.00